

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8
Docket No. P-913, Sub 5
Docket No. P-989, Sub 3
Docket No. P-824, Sub 6
Docket No. P-1202, Sub 4

In the Matter of)
)
Joint Petition NewSouth)
Communications Corp., et al. for)
Arbitration with BellSouth)
Telecommunications, Inc.)

Raleigh, North Carolina
Tuesday, June 29, 2004
Deposition of ERIC FOGLE,

a witness herein, called for
examination by counsel for the Joint
Petitioners, in the above-entitled action,
pursuant to Notice, the witness being duly
sworn by Nicole Ball Fleming, Court
Reporter and Notary Public in and for the
State of North Carolina, taken at the
offices of Parker Poe Adams & Bernstein,
150 Fayetteville Street Mall, Suite 1400,
Raleigh, North Carolina, beginning at 9:06
a.m., on Tuesday, June 29, 2004, such
proceedings being taken stenographically
by Nicole Ball Fleming.

<p>Page 2</p> <p>1 APPEARANCES OF COUNSELL</p> <p>2</p> <p>3 On behalf of the Joint Petitioners</p> <p>4 Stephanie Joyce</p> <p>5 John I. Hertmann</p> <p>6 Kelley Drive & Warren</p> <p>7 1200 19th Street NW</p> <p>8 Suite 500</p> <p>9 Washington DC 20036</p> <p>10</p> <p>11 On behalf of BellSouth</p> <p>12 Robert A. Culpepper</p> <p>13 Jim Meza</p> <p>14 BellSouth Legal Department</p> <p>15 675 West Peachtree Street NE</p> <p>16 Suite 4300</p> <p>17 Atlanta GA 30375</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 STIPULATIONS</p> <p>2 Prior to examination of the witness</p> <p>3 counsel for the parties stipulated and</p> <p>4 agreed as follows:</p> <p>5 1. Said deposition shall be taken for</p> <p>6 the purpose of discovery or for use as</p> <p>7 evidence in the above-entitled action or</p> <p>8 for both purposes as permitted by the</p> <p>9 applicable rules of civil procedure.</p> <p>10 2. Any objections of any party hereto as</p> <p>11 to Notice of the taking of said deposition</p> <p>12 or as to the time and place thereof or as</p> <p>13 to the competency of the person before</p> <p>14 whom the same shall be taken are hereby</p> <p>15 waived.</p> <p>16 3. Objection to questions and motions to</p> <p>17 strike answers need not be made during the</p> <p>18 taking of this deposition, but may be made</p> <p>19 for the first time during the progress of</p> <p>20 the trial of this case or at any pretrial</p> <p>21 hearing held before the Judge for the</p> <p>22 purpose of ruling thereon or at any other</p> <p>23 hearing of said case at which said</p> <p>24 deposition might be used, except that an</p> <p>25 objection as to the form of a question</p> <p>must be made at the time such question is</p> <p>asked or objection is waived as to the</p> <p>form of the question.</p> <p>4. That all formalities and requirements</p> <p>of the Statute with respect to any</p> <p>formalities not herein expressly waived</p> <p>are hereby waived, especially including</p> <p>the right to move for the rejection of</p> <p>this deposition before trial for any</p> <p>irregularities in the taking of the same</p> <p>either in whole or in part or for any</p> <p>other cause.</p> <p>5. That the sealed original transcript</p> <p>of this deposition shall be mailed</p> <p>first-class postage or hand-delivered to</p> <p>the party taking the deposition or its</p> <p>attorney for preservation and delivery to</p> <p>the Court, if and when necessary.</p>
<p>Page 3</p> <p>1 INDEX TO EXAMINATIONS & EXHIBITS</p> <p>2 Examination Page</p> <p>3 Direct by Ms. Joyce 5</p> <p>4 ---</p> <p>5 Deposition Exhibit Page</p> <p>6 1 Notice of Deposition 5</p> <p>7 2 Direct Testimony 9</p> <p>8 3 Attachment 2 27</p> <p>9 4 FCC 03-36 44</p> <p>10 5 Tariff FCC No. 1 50</p> <p>11 6 Item No. 2-15-1 51</p> <p>12 7 FCC 03-36 82</p> <p>13 8 Special Construction Check Sheet 91</p> <p>14 9 Attachment 4 156</p> <p>15 10 FCC 01-204 157</p> <p>16 11 Item No. 4-1-1 179</p> <p>17 12 FCC 03-36 182</p> <p>18 13 Agreement General Terms and</p> <p>19 Conditions 203</p> <p>20 14 Order No. PSC-03-1358-1 OF-1P 242</p> <p>21 15 Direct Testimony of Kathy Blake 246</p> <p>22 16 Docket No. P-100, SUB 133j 252</p> <p>23 17 Item No. 4-8(A)-1 272</p> <p>24 18 Docket No. P100 SUB 133j,</p> <p>25 Compliance Filing Executive</p> <p>Summary 275</p>	<p>Page 5</p> <p>1 (DEPOSITION EXHIBIT NO. 1 WAS MARKED)</p> <p>2 ERIC FOGLE,</p> <p>3 having been duly sworn,</p> <p>4 testified as follows:</p> <p>5 MS JOYCE: This deposition will</p> <p>6 be conducted in accordance with the</p> <p>7 general stipulations as set forth in the</p> <p>8 Civil Rules of Procedure.</p> <p>9 DIRECT EXAMINATION</p> <p>10 BY MS JOYCE:</p> <p>11 Q Please state your name and business</p> <p>12 address for the record.</p> <p>13 A My name is Eric Fogle. My business</p> <p>14 address is 675 West Peachtree Street in</p> <p>15 Atlanta, Georgia.</p> <p>16 Q Good morning. My name is Stephanie Joyce,</p> <p>17 and I am counsel for the following</p> <p>18 companies: NuVox, New South, KMC, and</p> <p>19 Xspedius. Do you understand that they are</p> <p>20 petitioners in this action?</p> <p>21 A Yes, I do.</p> <p>22 Q And in North Carolina, they're called</p> <p>23 competitive local providers or CLPs. If I</p> <p>24 use that acronym, will that make sense?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 6</p> <p>1 Q And if I called them competitive local 2 exchanges carriers or CLECs, would that 3 make sense to you? 4 A Yes, it would 5 Q Generally, I'm going to refer to these 6 companies as Joint Petitioners Will that 7 make sense to you? 8 A Yes, it will 9 Q Mr Fogle, do you know why you're here 10 today? 11 A I believe I'm here to give a deposition 12 Q I'm handing you an exhibit that's been 13 marked 1 Have you seen this document 14 before? 15 A Yes, I have 16 Q Can you tell me what it is? 17 A It's a notice of deposition of Eric Fogle 18 Q Do you recall the first time you saw this 19 document? 20 A I believe I saw it in my e-mail last week 21 Q Now, I direct your attention to the bottom 22 of the first page It states that, 23 pursuant to Rule 30(b)(6), the witness 24 should be prepared to respond to questions 25 related to all matters contained in the</p>	<p style="text-align: right;">Page 8</p> <p>1 A I believe four or five times 2 Q And I believe you understand the rules, 3 but just in brief, you understand you've 4 been sworn? 5 A Yes, I do 6 Q You understand that the answers you give 7 to me today could be used at a hearing as 8 if you were present at that hearing? 9 A Yes, I do 10 Q And you understand that the court reporter 11 cannot record a nodding of the head, and 12 so audible answers are appreciated? 13 A Yes, I do 14 Q And are there any medications or is there 15 any condition that would prevent you from 16 answering the questions that I'm going to 17 pose to you today? 18 A No, there's not 19 Q And I would ask just for sake of clarity 20 and our court reporter's ability to 21 transcribe that you let me finish my 22 questions before you give your answer 23 A Okay 24 Q I'm handing you a document that's been 25 marked Exhibit 2</p>
<p style="text-align: right;">Page 7</p> <p>1 witness' direct testimony that has been 2 filed -- continuing to the next page -- 3 in the above-captioned case Do you 4 understand what that means? 5 A Yes, I do 6 Q Mr Fogle, have you been deposed before? 7 A Yes, I have 8 Q Have you been deposed in connection with a 9 Section 251 arbitration? 10 A I don't believe I have been deposed as a 11 result of a 251 arbitration 12 Q And were you deposed as a BellSouth 13 employee? 14 A Yes 15 Q And can you describe generally the nature 16 of the actions for which you've been 17 deposed previously? 18 A A number of cases that involved complaints 19 by CLECs at the Georgia Public Service 20 Commission and the Florida Public Service 21 Commission relating to BellSouth's policy 22 on providing DSL services in conjunction 23 with CLEC voice services 24 Q How many times have you been deposed 25 before, roughly?</p>	<p style="text-align: right;">Page 9</p> <p>1 (DEPOSITION EXHIBIT NO 2 WAS MARKED) 2 Q Can you tell me what this document is? 3 A Yes It's direct testimony of Eric Fogle 4 Q And was this prepared for this case by 5 yourself? 6 A Yes, it was 7 Q And can you tell me what your title is at 8 this time at BellSouth? 9 A Yes I'm director in BellSouth's 10 interconnection operations organization 11 Q And what are your responsibilities as 12 director? 13 A My responsibilities are to work with 14 BellSouth on developing its broadband and 15 next generation technology policies as 16 well as products, and at the same time 17 support BellSouth in a number of 18 regulatory and legal environments to 19 advocate their position and to clarify 20 technology issues and technical issues 21 associated with those positions for the 22 various commissions and -- both the FCC 23 and state and public service commissions 24 Q And what kind of broadband policies have 25 you assisted in developing?</p>

<p style="text-align: right;">Page 10</p> <p>1 A Over the last several years, I've been 2 involved with the development of the DSL 3 services for BellSouth and have been 4 working on the development of the 5 technology and the product offerings and 6 determining the complexities associated 7 with offering those products at a very 8 competitive environment and helping 9 BellSouth develop those services and 10 features and capabilities to be 11 competitive in that marketplace 12 Q Are these policies that are used 13 internally at BellSouth? 14 A They're -- Essentially, I've helped build 15 the business, and the business rules And 16 as a result of that, BellSouth takes 17 positions to try to be competitive And 18 as a result, that has worked its way into. 19 I guess you would say, policies or -- and 20 methods and procedures for doing business 21 that are used internally or -- and also 22 positions that we've taken externally with 23 public service commissions or with the 24 FCC 25 Q And with whom does BellSouth compete, as</p>	<p style="text-align: right;">Page 12</p> <p>1 own DSL services One would be Florida 2 Digital Networks Another would be Covad 3 Communications I believe ITC DeltaCom 4 and some others have some of their own 5 broadband facilities that they're 6 providing and competing against BellSouth 7 in the retail space 8 Q And does BellSouth provide services to 9 Florida Digital Network or Covad in 10 connection with broadband services? 11 A Yes 12 Q What are those services? 13 A In relation to Covad, there's line sharing 14 services that BellSouth provides that 15 enables them to provide their broadband 16 services There are also unbundled 17 network elements and other pieces of 18 BellSouth's network that are made 19 available to CLPs for the provision of 20 their services 21 Q Which unbundled network elements are 22 provided? 23 A Loops 24 Q Anything else? 25 A In some communities, I'm sure they use</p>
<p style="text-align: right;">Page 11</p> <p>1 you've testified? 2 A In the area of broadband services, 3 BellSouth competes against cable companies 4 primarily Cable companies have developed 5 cable broadband service and are the 6 dominant players in that business base and 7 have more subscribers than BellSouth or 8 any of the DSL providers in that business 9 Q Could you name the specific cable 10 companies you're referring to? 11 A Comcast would be one I'm trying to think 12 of some other names of cable companies in 13 the Southeast I know Comcast is one of 14 the largest I'm just drawing a blank 15 unfortunately right now, but some of the 16 others -- but there are a number of them 17 Q Does BellSouth compete with these cable 18 companies in the retail market? 19 A Yes 20 Q And does BellSouth compete with any CLPs 21 in the broadband retail market? 22 A Yes 23 Q And which CLPs are those, to your 24 knowledge? 25 A There are a number of CLPs that have their</p>	<p style="text-align: right;">Page 13</p> <p>1 collocation spaces They probably use 2 some cross connects Other services are 3 necessary to interconnect their network 4 with our network or to use some of our 5 facilities 6 Q Does BellSouth use similar facilities for 7 its own DSL retail services? 8 A Yes 9 Q Does it use loops? 10 A Yes 11 Q Does it use cross connects? 12 A Yes 13 Q Mr Fogle, do you have any legal training? 14 A No 15 Q Any paralegal training? 16 A No 17 Q It states here that you have a Master of 18 Science in electrical engineering degree 19 Do you have any other advanced degrees? 20 A I have a Master's in Business 21 Administration 22 Q I direct your attention to the first page 23 of your testimony where it states that, 24 for a number of years, you led the 25 broadband marketing group within</p>

<p style="text-align: right;">Page 14</p> <p>1 BellSouth, continuing to the next page 2 What were your responsibilities 3 when you led the wholesale broadband 4 marketing group? 5 A My responsibility as the director of that 6 organization was to develop the products 7 that were offered to the wholesale ISPs, 8 which is internet service providers, as 9 well as have overall responsibility for 10 the marketing and direction over the 11 products and the underlying network 12 oneness and development, BellSouth's DSL 13 network. Help provide marketing, 14 planning, and determination, location 15 where DSLAMs, which are digital subscriber 16 line access multiplexers -- 17 Q Is that D-S-L-A-Ms? 18 A That is correct 19 Where those would be deployed to 20 optimize BellSouth's broadband footprint 21 Q You mentioned in your response that you 22 also did marketing. Was this marketing on 23 the wholesale customers of BellSouth? 24 A Marketing, we termed it wholesale 25 customers, but it is marketing to external</p>	<p style="text-align: right;">Page 16</p> <p>1 2003, is that correct? 2 A That is correct 3 Q What role, if any, have you played in the 4 negotiations of the interconnection 5 agreement that is at issue in this case? 6 A I've had very little involvement in direct 7 negotiation of the interconnection 8 agreement in this case 9 Q Did you ever participate on a telephone or 10 a teleconference call in which 11 negotiations took place? 12 A Not in this particular case 13 Q Did you advise the persons who, on behalf 14 of BellSouth, negotiated this 15 interconnection agreement? 16 A I have been asked my opinion on certain 17 positions or on certain technical issues, 18 provided that insight and perspective, but 19 that's to a very limited degree 20 Q Can you tell me the persons to whom you've 21 provided your opinions? 22 A I've been asked by John Rasilli about 23 positions and issues, technology issues, 24 as well as Keith Milner in relation to 25 BellSouth's DSL technology and evolution</p>
<p style="text-align: right;">Page 15</p> <p>1 ISPs like AT -- AT&T would be one, but 2 more like Earthlink, is one of our 3 customers. AOL is one of our larger 4 customers, as well as a couple of hundred 5 smaller internet service providers 6 Q Did you ever market to a CLP such as 7 Covad? 8 A We've had several conversations and 9 discussions with Covad about buying 10 BellSouth's DSL services at wholesale 11 Q Would you term that incumbent marketing? 12 A In the wholesale space, yes 13 Q And I direct your attention to page 2 of 14 your testimony at the top where it states 15 that formerly you were the director of 16 wholesale broadband marketing, indeed the 17 wholesale broadband marketing group 18 Were your responsibilities in that 19 position similar to the responsibilities 20 you performed when you led the wholesale 21 broadband marketing group? 22 A That's the same position. I was director 23 of that organization 24 Q And you've been a director of BellSouth's 25 interconnection operations since June of</p>	<p style="text-align: right;">Page 17</p> <p>1 as well as fiber technology and evolution 2 Q Anybody else? 3 A Naugh, I believe that's it 4 Q Did you participate in compiling responses 5 to the discovery questions that were asked 6 by the Joint Petitioners to BellSouth? 7 A Yes, I did 8 Q Can you tell me which issues these 9 discovery questions addressed? 10 A I don't recall right off the top of my 11 head which issues, but there are a number 12 of different issues that I cover in my 13 testimony that I was also involved 14 directly with the development of the 15 discovery response 16 Q Were there any questions that do not 17 relate an issue that you testified 18 regarding -- that you participated in 19 responding to? 20 MR CULPEPPER Object to the form 21 of the question 22 A I'm not sure I understand the question 23 Could you maybe rephrase it for me? 24 Q Were there any discovery questions that 25 you participated in providing a response</p>

<p style="text-align: right;">Page 18</p> <p>1 that do not regard the issues you're 2 testifying about -- 3 A No 4 Q -- in this testimony? 5 A Not that I'm aware of 6 Q Did you review the written responses to 7 interrogatories regarding the issues 8 you're testifying about? 9 A I believe I reviewed most of them I 10 can't be certain I've reviewed all of 11 them 12 Q Did you compile the documents that were 13 produced in response to requests for 14 production that regard your issues? 15 A I compiled a certain -- a large number of 16 them 17 Q And did you review the production of 18 documents regarding the questions that 19 speak to your issues? 20 A Could you please repeat that for me? 21 Q Did you review what ended up to be the 22 production to Joint Petitioners of 23 documents responsive to request for 24 production? 25 A I've reviewed probably most of the -- I</p>	<p style="text-align: right;">Page 20</p> <p>1 A In my current role at BellSouth, I have 2 developed a level of expertise in 3 broadband issues as well as a lot of 4 the -- and have been involved over the 5 past several years with BellSouth's 6 litigation of the DSL with UNE issues 7 And as a result, I was determined 8 to be -- I was probably the best and most 9 knowledgeable witness to support 10 BellSouth's position in this arbitration 11 Q Did anybody ask you to write it? 12 A Yes 13 Q Without revealing the content of a 14 privileged communication that you may have 15 had with an attorney, can you tell me who 16 asked you to write the testimony? 17 A My boss, Keith Milner, asked me to write 18 the testimony 19 Q Now, as I understand it, Mr. Milner is a 20 senior director, is that correct? 21 A That is correct 22 Q And he is your immediate supervisor? 23 A Yes 24 Q Do you know who Mr. Miller's immediate 25 supervisor is?</p>
<p style="text-align: right;">Page 19</p> <p>1 can't claim that I've reviewed all of 2 them 3 Q Have you ever participated in negotiations 4 for prior arbitration under Section 251? 5 A I believe I have, yes 6 Q And do you recall which CLPs were involved 7 in those negotiations? 8 A I believe I've been involved in -- I know 9 I've been involved in negotiations with 10 Florida Digital Networks as well as 11 Supra What I don't know is whether they 12 were specifically 251 arbitration 13 negotiations or not There were specific 14 issues relating -- offering our DSL 15 service in conjunction with their UNE 16 services, and I was involved with the 17 negotiation of the language associated 18 with that 19 Q Did you testify before any tribunal in 20 connection with Florida Digital Networks 21 or Supra's negotiations with BellSouth? 22 A I have testified before a tribunal in 23 Supra -- in some of the Supra cases 24 Q And why did you choose to write this 25 testimony for this arbitration?</p>	<p style="text-align: right;">Page 21</p> <p>1 A He works for a gentleman named Bill Stacy 2 Q To your knowledge, did anybody review your 3 testimony before it was filed in this 4 case? 5 A Yes 6 Q Again, without revealing the content of a 7 privileged communication, can you tell me 8 which persons those were? 9 A Folks who reviewed my testimony would be 10 Keith Milner, Jerry Latham, Lynn Brewer, 11 Tommy Williams, Jerry Johnson, Steve 12 Harris, as well as some lawyers 13 Q Is that Lynn Brewer, B-r-e-w-e-r? 14 A That's correct 15 Q Did you review the testimony that was 16 written by any other witness in this case? 17 A I have not 18 Q And, to your knowledge, did anybody make 19 electronic edits to your draft document of 20 the testimony? 21 A Yes 22 Q And without revealing any privileged 23 communication, can you tell me who those 24 persons were? 25 A I received electronic edits from all of</p>

<p style="text-align: right;">Page 22</p> <p>1 the same people Lynn Brewer, Keith 2 Milner, Jerry Johnson, Steve Harris, Jerry 3 Latham, and Tommy Williams 4 Q Are all of these persons employed in the 5 interconnection services operations 6 division of BellSouth? 7 A Some of them are interconnection 8 operations Others, I believe, are in a 9 product management organization 10 Q Would this be a product management 11 organization that deals with CLPs? 12 A Yes 13 Q Would these people also deal with 14 BellSouth end user customers? 15 A Are you referring to retail end user 16 customers? 17 Q Yes 18 A No, they would not deal with retail end 19 user customers 20 Q And, Mr Fogle, do you have an opinion as 21 to whether BellSouth has an obligation to 22 follow the orders of the state 23 commissions? 24 A I do, and we should always follow the 25 orders of -- meet our obligations with</p>	<p style="text-align: right;">Page 24</p> <p>1 the question 2 (THE COURT REPORTER READ BACK THE 3 REQUESTED PORTION OF THE RECORD) 4 A I mean, I don't believe we have discretion 5 to pick and choose orders that we comply 6 with I do believe that we have 7 discretion to interpret orders and 8 determine what is the proper method to 9 comply with those orders 10 Q And who would make that interpretation? 11 A It would depend on the order in terms of 12 which areas it was involved in We would 13 bring together a number of different 14 people who have expertise on the 15 technology and the operations and -- as 16 well as the services and the features and 17 make a determination of how best to comply 18 with the order 19 It oftentimes involves a lot of 20 expense, a lot of complicated rearranging 21 of our products or services, our network 22 technology So it just takes a lot of 23 people who know -- our experts on the 24 services and technology to come together 25 and figure out how best to comply</p>
<p style="text-align: right;">Page 23</p> <p>1 the state commissions, and we always do 2 Q And, to your knowledge, is BellSouth 3 prepared to comply with whatever order the 4 North Carolina Utilities Commission orders 5 in this case? 6 A Yes 7 Q Do you believe that BellSouth has the 8 discretion to determine which portions of 9 an order it will comply with and which 10 portions it will not comply with? 11 MR CULPEPPER Object to the form 12 of the question 13 Q You have not been instructed not to 14 answer, so 15 A I guess -- You said I've not been 16 instructed to answer? 17 Q To not -- You have not been instructed 18 not to answer 19 A Not to answer Okay 20 Q So, to the best of your knowledge -- 21 A Okay I'm trying to make sure I 22 didn't -- not instructed to answer -- 23 not answer I'm not sure what I'm 24 supposed to do next 25 MR CULPEPPER Can we read back</p>	<p style="text-align: right;">Page 25</p> <p>1 Q If the North Carolina Utility Commission 2 in this case issued an order or a rule 3 regarding DSL services, who would 4 interpret that rule? 5 A I would be involved with that as well as 6 probably my boss, Keith Milner, and John 7 Rasilli, a number of lawyers with 8 BellSouth, as well as the product 9 management organization for DSL 10 Q And if the North Carolina Utilities 11 Commission issued a ruling regarding 12 fiber-to-the-home groups, who would be 13 involved in interpreting that rule? 14 A Some of the same people Myself, Keith 15 Milner, and John Rasilli, as well as 16 lawyers And then we would probably 17 involve science and technology as well as 18 the product management groups that are 19 responsible for the fiber department 20 Q And as a nonlawyer sitting here this 21 morning, to the best of your knowledge, is 22 BellSouth complying with the orders of 23 state commissions that regard BellSouth's 24 provision of DSL services? 25 A Yes</p>

<p style="text-align: right;">Page 26</p> <p>1 Q Mr Fogle, is it your position that CLPs 2 must purchase the entire band width of a 3 loop under applicable law? 4 A Yes 5 Q And from where do you derive that 6 position? 7 A As I stated in my testimony, that the 8 FCC's Triennial Review Order specifically 9 has rejected other Joint Petitioners' 10 efforts to separate upper -- band width in 11 upper and lower bands And in -- 12 paragraph 270 of the TRO was very specific 13 on that issue 14 Q Is there any other applicable law that 15 speaks to this issue? 16 A I'm certain there's probably other earlier 17 rules, other earlier laws that speak to 18 line sharing, which is the issue of 19 splitting the upper frequency and lower 20 frequency spectrum from each other, but in 21 terms of the most recent rules on that are 22 the Triennial Review Order 23 Q I direct your attention to page 5 of your 24 testimony 25 A Uh-huh</p>	<p style="text-align: right;">Page 28</p> <p>1 Q I direct your attention to what is 2 numbered as page 12, section number 3 2.1.1.2 And if you see, there's an entry 4 there that's marked with a field marker, 5 customer short name version And it 6 states that a customer shall purchase the 7 entire band width of the loop and -- 8 except as required herein or by applicable 9 law Do you see that the words "or by 10 applicable law" are in bold? 11 A Yes, I do 12 Q And do you understand that the words are 13 in bold because they are presently in 14 dispute between the Joint Petitioners and 15 BellSouth? 16 A Yes, I understand that 17 Q And do you know why BellSouth has objected 18 to including the words "or by applicable 19 law" in this section of the agreement? 20 A I think it's ambiguous because our version 21 of the language is consistent with 22 applicable law 23 Q Would the orders of the Florida, Georgia, 24 Louisiana, and Kentucky State Commissions 25 apply to this provision, in your</p>
<p style="text-align: right;">Page 27</p> <p>1 Q Lines 11 to 12 where you state that, even 2 in those states where the state 3 commissions have ordered BellSouth to 4 continue to provide DSL service when 5 BellSouth is no longer the voice 6 provider Which state commissions are you 7 referring to in that statement? 8 A The state commissions that have ordered 9 BellSouth to continue to provide DSL 10 services would be Florida, Georgia, 11 Louisiana, and Kentucky 12 Q And, to your knowledge, are those orders 13 still in effect? 14 A Yes 15 (DEPOSITION EXHIBIT NO 3 WAS MARKED) 16 Q I'm going to hand you a large document 17 that's been marked Exhibit 3 Do you 18 recognize this document, Mr Fogle? 19 A Not yet It appears to be an attachment 20 to an interconnection agreement 21 Q Would you accept that this is an 22 attachment to the interconnection 23 agreement that is being litigated in this 24 case? 25 A Yes</p>	<p style="text-align: right;">Page 29</p> <p>1 opinion? 2 MR CULPEPPER Object to the form 3 of the question 4 Is this the most latest version of 5 Attachment 2? 6 MS JOYCE To the best of my 7 knowledge, it is 8 MR CULPEPPER I didn't see a 9 date on it 10 MS JOYCE This is how it came to 11 us, so I've just printed it from e-mail 12 It was an attachment 13 MR CULPEPPER Okay 14 A This section of the interconnection 15 agreement, to my knowledge, governs 16 spectrum unbundling or loop unbundling 17 where you have high frequency and low 18 frequency portions of the loop And it's 19 a very different issue than what's 20 affected -- or the state commissions have 21 ruled about BellSouth continuing to 22 provide DSL service with CLECs 23 Q If a state commission had ordered 24 BellSouth -- and, indeed, Florida, 25 Georgia, Louisiana, and Kentucky have done</p>

<p style="text-align: right;">Page 30</p> <p>1 so. according to your testimony, they've 2 ordered BellSouth to continue to provide 3 DSL services when BellSouth is no longer 4 the voice provider, what does a technical 5 configuration by which that would be 6 implemented? 7 MR CULPEPPER Object to the form 8 of the question 9 Q How would BellSouth continue to provide 10 DSL services when BellSouth is no longer 11 the voice provider? 12 A It depends on the particular state and how 13 the orders have been written. Each state 14 has made their own set of rules or their 15 own set of orders as to how we are to 16 implement that particular case. In 17 Florida, we provision our DSL service to 18 the end user over a separate line. It's 19 not actually on the same facility, so 20 there's no issue in terms of sharing the 21 frequency or sharing the spectrum on a 22 particular loop. 23 In Georgia and Louisiana, we have 24 been ordered to provide our DSL service 25 directly on the same loop facility as the</p>	<p style="text-align: right;">Page 32</p> <p>1 frequency portion of that loop in order to 2 provide our DSL services. We are not 3 paying for that, nor is it being unbundled 4 back to us, but we are getting access to 5 that high frequency portion in order to 6 provide our service. 7 Q Is BellSouth unbundling the low frequency 8 portion of that loop? 9 A Not creating any new network elements that 10 I'm aware of. The CLEC has still 11 purchased the entire loop. They have just 12 provided us access back to use a portion 13 of the loop to provide our DSL service, as 14 ordered by the commissions. 15 Q So is it a fair assessment that BellSouth 16 and the CLP are sharing that loop? 17 A They are providing access to it -- us, so 18 I guess you can say they're sharing it 19 with us. 20 Q And the provision I've directed your 21 attention to, 2.1.1.2, to your knowledge, 22 does this provision address only line 23 sharing? 24 A The section 2 is titled unbundled loops. 25 So I imagine the overall section relates</p>
<p style="text-align: right;">Page 31</p> <p>1 UNE-P. As a result, we had to create 2 specific interconnection language giving 3 us the rights to place our services on the 4 high frequency portion of the loop. And 5 those were adopted by a number of CLECs in 6 Georgia and Louisiana. And once those 7 were adopted, then we placed our DSL 8 services on the upper frequency portion of 9 their loops. 10 And in Kentucky, they -- the 11 Kentucky Health Service Commission gave us 12 the option of providing our DSL service 13 over a resold line and then have the 14 resold line repriced or discounted to the 15 UNE-P rate as an interim solution until we 16 could get other systems and services in 17 place. So we provide our DSL service over 18 the resold line, not over the UNE. 19 Q Where BellSouth provides DSL over the same 20 loop, which is a UNE-P or UNE loop -- 21 A Uh-huh. 22 Q -- is it then unbundling the high 23 frequency portion of that loop, in your 24 opinion? 25 A We are required to have access to the high</p>	<p style="text-align: right;">Page 33</p> <p>1 to the rules and conditions of unbundling 2 the entire loop. 3 Q Right. I have directed your attention 4 specifically to the subpart that's marked 5 2.1.1.2. Is this provision regarding only 6 line sharing, in your opinion? 7 A Yes. 8 Q And are you familiar with the term line 9 splitting? 10 A Yes. 11 Q Can you provide me your understanding of 12 what line splitting is? 13 A Line splitting is where the one CLEC who 14 has purchased the entire bandwidth of the 15 loop chooses to make available a portion 16 of that loop to another CLEC for purposes 17 of running DSL or data service. 18 Q And, in your opinion, does this provision 19 that we're discussing regard line 20 splitting? 21 A No, I don't believe it does. 22 Q If a CLP -- one of the Joint Petitioners 23 who had executed an interconnection 24 agreement with you in the form that's 25 before you right now, can you identify</p>

<p style="text-align: right;">Page 34</p> <p>1 what portion of Attachment 2 they would 2 invoke in order to perform line splitting? 3 A Of attachment to this entire document? 4 Q Subpart 2 regarding unbundled loops 5 A Okay 6 Q Unless you find another part that would be 7 relevant 8 A I'm not that familiar with this document. 9 so it would be hard for me to claim what 10 sections allow line splitting 11 (PAUSE) 12 A I don't see anything in this subsection 2 13 that specifically talks to line splitting 14 Q All right At page 4 of your testimony, 15 sir, beginning at line 18, you have a 16 passage that begins, even during the 17 transition period, the FCC has made clear 18 that CLPs are not buying a portion of the 19 loop What are you referring to when you 20 say "transition period"? 21 A Transition period is the time frame that 22 the FCC has indicated -- since they have 23 determined that their CLECs are not 24 impaired without access to line sharing, 25 so there's a transition period with which</p>	<p style="text-align: right;">Page 36</p> <p>1 loop 2 Q And at lines 22 to 25, you have a quote 3 from the FCC And it states that, we 4 require incumbent LECs, L-E-C-s, to 5 provide access to the high frequency 6 portion of the loop based on the criteria 7 for presumed acceptability Would that be 8 an unbundled network element, a UNE, 9 U-N-E? 10 A No 11 Q How would you characterize that facility? 12 A I would characterize it similar to how in 13 the interconnection agreements that we 14 have in place -- we've been ordered to 15 provide our DSL service on the UNE-P of a 16 CLEC or we've been given access to the 17 high frequency portion for purpose of 18 providing our DSL service, I would 19 characterize it as just the reverse of 20 that 21 Q Is it an access service? 22 A The high frequency portion of the loop, is 23 it an access service? 24 Q As defined in this quote that you've 25 included in your testimony?</p>
<p style="text-align: right;">Page 35</p> <p>1 the -- the CLPs are required to find 2 other services via line splitting or buy 3 the entire -- buy a loop So there's a 4 transition period which allows them to 5 transition their business plans during 6 that time 7 Q How long is the transition period? 8 A I believe it ends on October 1st, 2004 9 Q And up -- And until that date, how would 10 a CLP access less than the full band width 11 of a loop? 12 A I'm not sure of your question If you'd 13 rephrase it possibly for me? 14 Q How would a CLP engage in line sharing up 15 until the end of the transition period for 16 an arrangement not presently in service 17 today? 18 A Up until the transition period, then 19 the -- until October 1st, 2004, I believe 20 they can still order line sharing 21 services And then after October 1st, 22 they can no longer order those services, 23 and I believe there's a repricing over the 24 next couple of years until they have to 25 actually go ahead and purchase the entire</p>	<p style="text-align: right;">Page 37</p> <p>1 A No, I don't believe that it is 2 Q How would a CLEC order this arrangement 3 that is discussed in this quote? 4 A They would order it I believe using the 5 same ordering methods that they've used 6 historically that are already in place 7 Q What would you call that product at 8 BellSouth? 9 A I believe it's termed line -- it's called 10 line sharing 11 Q And do you consider that a service or a 12 product? 13 A I would consider it a product 14 Q A wholesale product? 15 A Yes 16 Q Do you know what the rates are for such a 17 wholesale product when a CLP wants to 18 access less than the full bandwidth of a 19 loop? 20 A I do not 21 Q Do you know where those rates are located? 22 A I believe they're specified in the 23 interconnection agreements I know 24 they're different from state to state 25 depending on what rates have been</p>

<p style="text-align: right;">Page 38</p> <p>1 established, but I don't know what the 2 actual rates are 3 Q Do you know under what methodology those 4 rates were derived? 5 A I'm not certain, no 6 Q Are you familiar with the term total 7 element long run incremental cost? 8 A Yes, I am 9 Q Do you know whether those wholesale 10 product rates are created in accordance 11 with TELRIC? 12 A I would assume they are since they're 13 historical derivation as a result of UNEs 14 that were unbundled network elements, but 15 I was not involved in the development of 16 those rates 17 Q And, Mr. Fogle, what is your position as 18 to when an order of the FCC becomes 19 effective? 20 A On -- I'm not sure of your question 21 Q As a general matter, do you have an 22 understanding as to when an order 23 promulgated by the FCC becomes effective 24 as a matter of law? 25 MR. CULPEPPER Object to the form</p>	<p style="text-align: right;">Page 40</p> <p>1 existing copper loops And they did not 2 specify that -- a particular date before 3 or after or when, in their words, and so 4 we're not looking for that either It's 5 just there's no impairment, regardless of 6 when it was deployed So we're making -- 7 taking the position that since there's no 8 impairment, the FCC, since they didn't 9 state a particular effective date on this 10 particular order, there isn't one 11 Q All right I think in your response you 12 may have been saying two things 13 A Okay 14 Q My question was, the TRO has no specific 15 effective date provided by the FCC, this 16 order shall be effective on this day Is 17 that your position? 18 A I'm not aware of where it might -- it may 19 or may not say that somewhere else in the 20 TRO 21 Q Are you also saying that with specific 22 regard to fiber-to-the-home loops and the 23 order -- the portion of the order dealing 24 with that, if that portion of the order 25 does not contain a date in it, these rules</p>
<p style="text-align: right;">Page 39</p> <p>1 of the question 2 A I mean, it's pretty clear usually that -- 3 I mean, they're issued on a particular day 4 and they usually say in them when they're 5 effective 6 Q If an order does not say in them when 7 they're effective, is there no effective 8 date? 9 MR. CULPEPPER The same 10 objection 11 A I'm not sure 12 Q At page 7 of your testimony, line 4 -- or 13 beginning at line 3, there's a statement, 14 regardless of whether or not they were 15 deployed prior to the effective date of 16 the TRO, even though no effective date is 17 specified So it's your position that the 18 TRO has no specified date in it? 19 A On this particular issue, which is 20 effecting unbundling relief as applicable 21 to fiber-to-the-home loops, the FCC 22 specifically found there's no impairment 23 and thus did not make a requirement for us 24 to provide unbundling except in one 25 specific situation where we're retiring</p>	<p style="text-align: right;">Page 41</p> <p>1 are effective on this day? 2 A That is correct 3 Q Also on page 7, further down on the page, 4 lines 15 to 16, you state that the 5 language of the Joint Petitioners have 6 offered creates an obligation that the FCC 7 did not intend What do you mean by that 8 statement? 9 A Well, if the FCC intended to create an 10 effective date, our position is they would 11 have put that in their order 12 Q Are you familiar with the term greenfield 13 loop? 14 A Yes 15 Q And what is a greenfield loop? 16 A A greenfield loop is -- or a loop that is 17 placed into an area that is newly 18 developed or being newly developed It's 19 an area that does not have 20 telecommunications facilities prior to 21 when they're being constructed 22 Q On what date would a loop have to be 23 installed to be determined a greenfield 24 loop? 25 A A greenfield loop, it's a term that's used</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 in the industry for any loop that is being 2 constructed in a new area, so it's 3 depending on where you're sitting at the 4 time. Like today, greenfield areas, as we 5 would refer to them in BellSouth, are 6 areas that are being constructed or 7 developed now. New housing subdivisions, 8 new apartment complexes, new office 9 buildings, those would all be considered 10 greenfields. There's no facilities 11 available today because none have been 12 constructed. Two months from now, some of 13 that construction would complete and those 14 areas would no longer be considered 15 greenfield. And whatever areas are still 16 under construction would be considered 17 greenfield going forward. It's a term 18 that's used essentially to describe areas 19 of new construction. 20 Q If a fiber-to-the-home loop had been 21 installed the day after the TRO was 22 released, would it be a greenfield loop, 23 in your opinion? 24 A Well, all loops start out as greenfield 25 loops because -- I mean, greenfield is</p>	<p style="text-align: right;">Page 44</p> <p>1 A Once service has all been turned up and 2 the area is built out, it is no longer 3 new. 4 Q All right. 5 (DEPOSITION EXHIBIT NO. 4 WAS MARKED.) 6 Q I'm handing you a document that's been 7 marked Exhibit 4. Do you recognize this 8 document? 9 A No, I do not. 10 Q Do you recognize the front page? 11 A I don't believe I've ever seen it before, 12 but it appears to be a report and order on 13 remand and further notes of proposed rule 14 making from the FCC. 15 Q Would you accept that this is the front 16 page of the TRO? 17 A Yes, that would be. 18 Q And because it's a voluminous document, 19 I've only provided you with a portion of 20 that order that's been printed from the 21 FCC's website. And I direct your 22 attention to the section that's -- begins 23 on page 2 of the exhibit called FTTH 24 loops. 25 MR. CULPEPPER: I don't have a</p>
<p style="text-align: right;">Page 43</p> <p>1 just a term that describes an area of 2 under new construction. So it's -- it is 3 -- you know, it's -- newly deployed or 4 greenfield just simply refers to what 5 you're looking forward to and what you're 6 doing in the future. 7 Q So the determination of whether a loop is 8 a greenfield loop is not dependent on what 9 date the TRO came out? 10 MR. CULPEPPER: Object to the form 11 of the question. 12 A I'm not sure -- I mean, maybe you can 13 rephrase the question for me. I'm not 14 real clear on it, what you're asking. 15 Q If the TRO had never been released and 16 didn't exist, would there be greenfield 17 loops in BellSouth's network? 18 A Yes, there would be greenfield loops. 19 We've been talking about greenfield loops 20 for years. It's a term that's used inside 21 BellSouth and in the industry for areas of 22 new construction. 23 Q When does it become -- Exactly, what 24 moment in time does it become a brownfield 25 loop?</p>	<p style="text-align: right;">Page 45</p> <p>1 page 2. 2 MS. JOYCE: The second page. 3 MR. CULPEPPER: Okay. 4 MS. JOYCE: It's not marked 2, but 5 it's page -- 6 MR. CULPEPPER: Page 163? 7 MS. JOYCE: Yes. 8 MR. CULPEPPER: Okay. 9 Q Did you review -- And if you need to take 10 a moment, please do. 11 Did you review this section when 12 you wrote your testimony regarding the 13 issue we're discussing? 14 MR. CULPEPPER: Object to the 15 question to the extent it's asking the 16 deponent to disclose privileged 17 information. 18 A I did review this particular section prior 19 to writing the testimony. 20 Q Can you direct me to the portion of this 21 section that supports your understanding 22 of what is a greenfield loop in the FTTH 23 context? 24 A In the -- I guess the second sentence 25 where they talk about, our conclusion</p>

<p style="text-align: right;">Page 46</p> <p>1 applies to FTTH loops deployed by 2 incumbent LECs in both new construction 3 and overbuild situations. The area where 4 they're talking about new construction, 5 that's an area that we commonly refer to 6 in the industry as greenfield. 7 The next two sentences kind of 8 elaborate on that sentence, the first of 9 which they talk about our obligations in 10 the overbuild situations. The second 11 sentence refers to newly deployed or 12 greenfield fiber loops which, again, is 13 discussing or talking about the new 14 construction portion of this rule. 15 Q And is it your testimony that the term new 16 construction is determined by the ILEC in 17 how it views its build-out plans? 18 MR CULPEPPER Object to the form 19 of the question. 20 A I'm -- I'm not sure of your question. 21 Could you maybe rephrase it for me? 22 Q I guess to be somewhat glib, is a new 23 construction anything that BellSouth says 24 it is? 25 A No. I mean, new construction -- it's</p>	<p style="text-align: right;">Page 48</p> <p>1 location in that there's nothing embedded, 2 there's nothing existing there, no 3 services -- no infrastructure available 4 to offer services, so something new must 5 be built to reach those customers. 6 Q What is your understanding of what an 7 overbuild is? 8 A An overbuild situation is where we have 9 existing infrastructure or existing 10 telecommunications planned and we choose 11 to come in and build new infrastructure or 12 new plant on top of that existing 13 infrastructure usually for the purposes of 14 offering new services or to put in new 15 technologies that are more cost effective 16 for other reasons. But it's us 17 reconditioning or rebuilding our 18 infrastructure -- our existing 19 infrastructure to upgrade with new 20 technologies and new services. 21 Q Is that rebuilding considered by you to be 22 a greenfield? 23 A No. 24 Q Is it a brownfield? 25 A It's -- Some people refer to it as</p>
<p style="text-align: right;">Page 47</p> <p>1 pretty apparent when a new construction 2 would be. You drive by and you see 3 bulldozers and buildings going up and 4 there are areas that they start off as 5 green fields and turn into housing 6 developments, apartment complexes, office 7 buildings, those types of things. That 8 is, you know -- the greenfield area is 9 completely an area of new construction. 10 It requires -- We do a lot of work to 11 build up facilities to those new 12 locations, new construction areas. 13 Q So is it your testimony that the word 14 greenfield refers to the fact that it's an 15 open meadow with no construction on it yet 16 and there are no buildings there? 17 A It's not necessarily an open meadow or no 18 buildings. It is simply that there's new 19 construction or new housing units or 20 office units or areas in which there are 21 no facilities built at present and someone 22 has to make the investment to build 23 facilities out to reach those potential 24 customers. And so as a result, it's a 25 greenfield application or greenfield</p>	<p style="text-align: right;">Page 49</p> <p>1 brownfield. It's more commonly referred 2 to as overbuild. 3 Q Do you believe that BellSouth has any 4 obligation to provide a rebuilt facility 5 of the type that you just characterized as 6 an unbundled network element? 7 A That's a fairly broad question. Are you 8 referring to a particular -- like a 9 fiber-to-the-home specifically or -- 10 Q Or with respect to the testimony you've 11 just given about BellSouth rebuilding, 12 what it typically calls overbuild? 13 A Uh-huh. 14 Q Is it your position that -- or do you 15 have a position as to whether BellSouth 16 has an obligation to provide overbuilt 17 facilities to a CLP as a UNE? 18 A In regards to fiber-to-the-home loops in 19 particular where we have chosen to do an 20 overbuild, there's existing copper 21 infrastructure, and we've chosen to 22 replace that with fiber-to-the-home. Our 23 obligation is to continue to provide 24 narrow band access to those locations so 25 as to not reduce the available footprint.</p>

<p style="text-align: right;">Page 50</p> <p>1 to CLECs And that -- only in situations 2 where we're doing an overbuild 3 Q All right 4 (DEPOSITION EXHIBIT NO 5 WAS MARKED) 5 Q I'm handing you a document that's been 6 labeled Exhibit 5 Do you recognize this 7 document? 8 A Yes 9 Q Can you tell me what it is? 10 A It's an FCC Tariff No 1 specific to 11 BellSouth's DSL service 12 Q Have you ever reviewed the provision that 13 appears on this page before? 14 A Yes 15 Q Can you direct me to the language on this 16 page that would explain what kind of 17 access a CLP or a CLEC could get to a loop 18 that is in use by BellSouth for DSL 19 services? 20 A I don't believe that there's any language 21 on this page that provides access to a 22 CLEC to a loop that's being used by 23 BellSouth 24 Q I'm now handing you a document that's been 25 marked Exhibit 6</p>	<p style="text-align: right;">Page 52</p> <p>1 deployed fiber-to-the-curb FTTC to 99.271 2 living units in North Carolina Do you 3 see that? 4 A Yes 5 Q Do you characterize those loops as 6 greenfield loops or brownfield loops? 7 A They would be brownfield 8 Q And in the previous sentence, it states, 9 BellSouth currently has zero 10 fiber-to-the-home loops deployed in North 11 Carolina Do you see that? 12 A Yes, I do 13 Q And did you assist in providing this 14 response to the Joint Petitioners? 15 A Yes, I did 16 Q Do you know whether BellSouth is presently 17 installing fiber-to-the-home loops in 18 North Carolina? 19 A I do not believe that we are 20 Q Are there any greenfield fiber-to-the-home 21 loops -- deployed loops in North 22 Carolina? 23 A Unless there is a technology test that may 24 be happening or some very small amount, 25 that could be possible Other than that,</p>
<p style="text-align: right;">Page 51</p> <p>1 (DEPOSITION EXHIBIT NO 6 WAS MARKED) 2 Q Do you recognize this document? And I 3 invite you to review it 4 (PAUSE) 5 A Yes, I do 6 Q This is a response that BellSouth provided 7 to the Joint Petitioners in response to 8 their discovery questions, is that 9 correct? 10 A Yes, it is 11 Q And it's marked item number 2-15-1 Do 12 you understand that to mean that these 13 questions regard issue 2-15? 14 A Yes, they do 15 Q I direct your attention to the page that's 16 numbered 31 in this exhibit, but it's the 17 third page of the exhibit 18 A Okay 19 Q And the question posed to BellSouth was, 20 provide all documents regarding the 21 proportion as a percentage of BellSouth 22 loops that are fiber-to-the-home loops 23 And at the bottom of the page, 24 there are figures provided that as of 25 December 31st, 2003, BellSouth has</p>	<p style="text-align: right;">Page 53</p> <p>1 we are not commercially deploying 2 fiber-to-the-home in North Carolina at 3 this time 4 Q Okay Is it correct that there are not 5 any brownfield fiber-to-the-home loops in 6 North Carolina? 7 A That is correct 8 Q And I direct your attention now to the 9 first page of the exhibit, which also 10 states that BellSouth currently has zero 11 fiber-to-the-home loops deployed in 12 Alabama There are no brownfield 13 fiber-to-the-home loops in Alabama at this 14 time? 15 A That's correct 16 Q Nor any greenfield fiber-to-the-home 17 loops? 18 A I don't believe we're commercially 19 deploying it Like I said, there may be 20 some specific technology tests that are 21 going on where individual loops may have 22 been serviced, but there's been no 23 commercial deployment 24 Q And as to fiber-to-the-curb loops, as 25 indicated on this page, that has been</p>

<p style="text-align: right;">Page 54</p> <p>1 deployed in Alabama to 18,275 living 2 units Do you see that? 3 A Yes 4 Q Are those all brownfield FTTC loops, in 5 your opinion? 6 A Yes 7 Q Can you tell me what the term living unit 8 means? 9 A It's a term that's used to describe 10 generically a household, could be a 11 apartment, could be a condominium, it 12 could be a duplex or a residence A 13 residential living unit of some sort It 14 could be a stand-alone -- freestanding 15 home 16 Q Can there be a fiber-to-the-home loop 17 deployed to a business location? 18 A I guess -- If you really -- nids and 19 nats, you could say no, because it's not a 20 home, but the fiber to the premise or 21 fiber to the -- fiber could be deployed 22 all the way to a business location 23 Sometimes this is referred to collectively 24 as FTTX or fiber-to-the-something But 25 the same technology can be used to provide</p>	<p style="text-align: right;">Page 56</p> <p>1 interchangeably? 2 A I've seen them used a lot 3 interchangeably I have a tendency to be 4 a bit of a purist in that 5 fiber-to-the-home means that it goes to a 6 house, fiber-to-the-premise would be going 7 to a business But the underlying 8 technology would be the same 9 Q And an FTTC loop and an FTTP loop would 10 not be the same things, is that correct? 11 A They are incredibly close to each other in 12 terms of what they are Fiber-to-the-curb 13 and fiber-to-the-home, the only difference 14 is what the choice is for the last couple 15 hundred feet, choice of technology for 16 those last couple hundred feet from the 17 curb to the house Fiber -- There's no 18 differences in the services that are 19 available There's no differences in 20 capabilities offered between 21 fiber-to-the-curb and fiber-to-the-home 22 The difference is just that the last few 23 hundred feet is typically a copper or 24 coaxial drop as opposed to a fiber drop 25 that goes into the home</p>
<p style="text-align: right;">Page 55</p> <p>1 services to businesses as we provide 2 services to home 3 Q Could that acronym possibly be FTTB for 4 business? 5 A Could be You also see FTTP, which is 6 fiber-to-the-prem 7 THE COURT REPORTER Prem? 8 THE WITNESS Prem as in short for 9 premise 10 Q Are an FTTH loop and FTTP loop deployed to 11 the same living units? 12 A They could be I mean, it's just -- 13 those are just different names for 14 technologies that are being used As -- 15 telecom, as you find out, there's lots of 16 different acronyms for the same thing, and 17 so there's one on line technology, which 18 is essentially the concept taking the 19 fiber all the way to the customer 20 location And so they call it lots of 21 different things, but it's essentially 22 taking fiber all the way into the home or 23 a business or an office, whatever the case 24 would be 25 Q Would you use the acronyms FTTH and FTTP</p>	<p style="text-align: right;">Page 57</p> <p>1 Q But as used in these acronyms -- 2 A Uh-huh 3 Q -- the curb is not the same as a premise? 4 A No, it is not 5 Q Do you know whether BellSouth has any 6 installed FTTH loops in any other of its 7 states? 8 A I believe we've been doing some technology 9 trials where we have a very limited number 10 with specifically chosen customers who are 11 testing out some technologies, but I 12 believe that is the limit We have chosen 13 to deploy fiber-to-the-curb as our chosen 14 technology for fiber deployment as opposed 15 to fiber-to-the-home 16 Q Would a trial loop of that kind be a 17 brownfield loop, in your opinion? 18 A I'm not even sure what -- it exists, 19 therefore, by definition, it's 20 brownfield If it's already been -- If 21 it didn't exist, by definition it would be 22 greenfield But in those particular 23 cases, we're not even usually charging the 24 end user for the services, we're just 25 testing the technology A lot of the</p>

<p style="text-align: right;">Page 58</p> <p>1 times it's an employee of the company, 2 that type of thing. We're just typically 3 trying to field trial, field test a 4 particular technology by a particular 5 vendor. 6 Q So a trial is neither a greenfield nor a 7 brownfield? 8 A The legal designation of a trial would -- 9 I mean, it's usually not even -- it's 10 something where we're -- we've got a 11 technology group who has put some 12 equipment in the network specifically to 13 try to see how service is going to work 14 for a particular end user. It's a -- what 15 we call friendly end user, employee, that 16 type of thing. So it's not one that any 17 services would be typically available. 18 It's not one where we are selling service 19 or making it commercially available. 20 We're simply trialing a technology. So I 21 do know that we've got some -- a variety 22 of trials out there that we're running at 23 any given time for various different new 24 technologies that are out there. So it 25 would not surprise me if we had at least a</p>	<p style="text-align: right;">Page 60</p> <p>1 how many FTTC loops there are deployed in 2 Georgia? 3 MR. CULPEPPER: Out of an 4 abundance of caution, I want to put an 5 objection on the record, to the extent the 6 line of questioning goes to testimony 7 beyond the deponent's direct testimony in 8 North Carolina. I anticipate this won't 9 be an issue down the road, but I want to 10 put it on the record. 11 A I don't know the number in Georgia. 12 Q I don't want you to speculate, but, in 13 your expertise, could you ballpark it? Is 14 it between 10,000 and 90,000? 15 A I really don't know, to tell you the 16 truth. It's -- It would depend on 17 whether or not there's been a more 18 aggressive deployment of fiber-to-the-curb 19 in Georgia versus other states. And I 20 don't know whether that's been the case or 21 not. So it could be -- I couldn't 22 speculate. It could be 10,000, it could 23 be 90,000, it could be 200,000. I simply 24 don't know. 25 Q I don't want to ask you to speculate.</p>
<p style="text-align: right;">Page 59</p> <p>1 handful of fiber-to-the-home circuits in 2 place in our network to trial customers. 3 Q Can you identify states in which these 4 trial loops have been deployed? 5 A We typically do them in Georgia and 6 Florida, more often in Georgia. But I 7 don't know -- occasionally we make a 8 decision to do it in some other place. 9 Q Assuming the trial loop stays 10 installed -- 11 A Uh-huh. 12 Q -- stays in the network, do you know 13 whether BellSouth would provide a CLP 14 access to it as a UNE? 15 A Trials will never stay in the network. 16 After the trial is over, we take them down 17 and the customer returns to their previous 18 service. So the only reason they would 19 stay is if we're still conducting some 20 aspect of the trial. 21 Q And with regard to FTTC loops, the 22 responses you and I have reviewed state 23 that there are approximately 18,000 of 24 those loops in Alabama and 99,000 FTTC 25 loops in North Carolina. Can you estimate</p>	<p style="text-align: right;">Page 61</p> <p>1 then. That's not helpful. 2 Could you answer that question for 3 Florida, how many FTTC loops are installed 4 in Florida? 5 A Unless it happens to be in this 6 interrogatory, I don't know that answer 7 either. 8 Q So then other than the responses that are 9 before you here that you and I have 10 discussed that have already been provided, 11 you couldn't provide me with an estimate 12 in any other BellSouth state of the number 13 of installed FTTC loops? 14 A The last time I looked at this data was in 15 the development of this response, and I've 16 simply forgotten what the other states 17 had. I just don't recall. 18 MS. JOYCE: Would you like to take 19 a break, or do you want to continue? 20 (RECESS) 21 BY MS. JOYCE: 22 Q Mr. Fogle, you understand that you're 23 still under oath? 24 A Yes, I do. 25 Q Is it your position that the definition of</p>

<p style="text-align: right;">Page 62</p> <p>1 line conditioning is something that 2 BellSouth would do to a loop for its own 3 retail customers? 4 A I don't believe the definition of line 5 conditioning is limited to just what 6 BellSouth could perform for itself 7 Q Does BellSouth perform line conditioning 8 for its retail customers? 9 A There are certain forms of line 10 conditioning that we do perform for our 11 retail customers 12 Q Do you perform it for customers receiving 13 \DSL services? 14 A Yes 15 Q Would you perform line conditioning for a 16 customer served over a DS-1 loop? 17 A I believe that there would probably be 18 times when line conditioning would be 19 necessary to be able to provide a DS-1 20 Q And so you would perform that line 21 conditioning for your retail customer? 22 A I believe so, yes 23 Q Do you have any understanding about 24 whether the customer would be charged for 25 that line conditioning?</p>	<p style="text-align: right;">Page 64</p> <p>1 and in some cases makes it unusable for 2 the end user So we remove bridge tap for 3 \DSL customers to remove the interference 4 so that their throughput speeds and the 5 quality of service goes up 6 Q Would it ever be the case that there would 7 be all bridge taps removed from an \DSL 8 loop that is used by a BellSouth retail 9 customer? 10 A There could be cases where all bridge tap 11 would be removed It would depend on the 12 engineering judgment at the time to -- 13 when they determine what bridge tap is in 14 place and what potentially needs to be 15 removed as to what they would do 16 Routinely for BellSouth's DSL's customers, 17 we just simply don't qualify customers 18 with excessive bridge taps for DSL 19 service, so they're not able to order the 20 service 21 Q What is your definition of excessive 22 bridge tap? 23 A An excessive bridge tape would be a bridge 24 tap that is still on the loop facility as 25 a result of some historical requirements</p>
<p style="text-align: right;">Page 63</p> <p>1 A I don't know 2 Q To your knowledge, does BellSouth perform 3 line conditioning on DS-1 loops in use by 4 a CLP? 5 A I would assume that we do, but I wouldn't 6 know any specifics around that 7 Q What might be involved in performing line 8 conditioning? 9 A Line conditioning is a broad term It's 10 used to -- just as it sounds, any kind of 11 activity or work that is done to condition 12 a line for use It could involve removal 13 of bridge taps, it could involve removal 14 of load coils Some people consider line 15 and station transfers as line 16 conditioning Essentially, it's any kind 17 of rearrangement or modification of the 18 outside plant infrastructure to condition 19 a line for use for a particular service 20 Q Why might it be necessary to remove a 21 bridge tap from an \DSL loop? 22 A Bridge tap essentially acts as a very 23 large antenna And as a result, it 24 collects and picks up interference, and 25 that interference degrades the DSL signal</p>	<p style="text-align: right;">Page 65</p> <p>1 but is no longer needed and no longer has 2 a design purpose, therefore it's 3 considered excessive It's more than is 4 necessary So you can then remove the 5 excessive amounts of bridge tap to 6 potentially facilitate providing DSL 7 service 8 Q What design purpose might bridge tap serve 9 in other contexts? 10 A Bridge tap is something that telephone 11 companies have been using for a long 12 time It is essentially a -- It's an 13 outside plant arrangement technique where 14 you -- any particular line facility is 15 tapped or bridged to multiple end user 16 locations so that when a particular end 17 user moves into a home or orders phone 18 service, we can use the same facility in 19 one of multiple locations and it increases 20 the efficiency of our outside plant 21 infrastructure and its ability to serve 22 voice services 23 Q And why might a load coil be removed from 24 an \DSL loop? 25 A A load coil, its purpose in the loop is to</p>

<p style="text-align: right;">Page 66</p> <p>1 remove high-frequency noise. It allows 2 voice frequencies to pass through very 3 easily. It essentially shorts out or 4 shunts high-frequency noise, which the end 5 user hears as static. On particularly 6 long loops, they add load coils so that 7 the end user has a higher-quality voice 8 service. The problem with the load coil 9 is that since it restricts or limits the 10 high-frequency noise, it also restricts 11 and limits the DSLs frequencies. So DSL 12 service does not pass through or work 13 through a load coil device. So it's a 14 case where you would remove it when it 15 doesn't effect the voice service. Doesn't 16 negatively impact the voice service, you 17 remove it to facilitate providing DSL 18 service. 19 Q Would you remove a load coil from a loop 20 in order to provide any other service? 21 A There could be load coils on loops that 22 they're going to reuse those loops for 23 other things, like DS-Is or other 24 services, but -- I mean, the load coil's 25 designed produce is to improve the quality</p>	<p style="text-align: right;">Page 68</p> <p>1 cross box that does not have those 2 impairments that could also be used to 3 serve that end user's locations voice 4 service. And so what we do is we take out 5 the voice -- the pair that is impaired 6 with the impairments and provision it to 7 somebody else or take it out of service 8 and we use the unimpaired line to provide 9 the voice service and then the DSL service 10 to the end user location. So we're 11 conditioning the plant by changing the 12 facility we use to provide the voice and 13 the DSL service. 14 Q Is that rearrangement, that transfer of 15 loops done physically by touching each 16 loop and repositioning it? 17 A Yeah. It requires you to move jumpers and 18 physically reconnect at a different 19 facility. 20 Q And if that type of rearrangement or 21 transfer had been performed, would that 22 work be recorded somewhere in BellSouth's 23 systems? 24 A Yeah, we'd have to record the different 25 facility as being assigned or being used</p>
<p style="text-align: right;">Page 67</p> <p>1 of the voice service. It impedes just 2 about everything else. 3 Q Is it possible a bridge tap could be 4 present on a DS-1 line? 5 A I don't know. 6 Q Would the presence of a bridge tap impair 7 other types of nonvoice telecommunication 8 services besides DSL? 9 A It could, yes. 10 Q Can you think of what those services might 11 be? 12 A Any data service that has higher 13 frequencies, bridge taps, again, act as an 14 antenna and they will go -- they pull in 15 high-frequency noise into the loop that 16 could interfere with any type of data 17 service. 18 Q What is a line station transfer? 19 A Line station transfer is where we have -- 20 an example would be a particular loop that 21 feeds an end user customer that does not 22 qualify for DSL. It has bridge tap, it 23 has load coils, it has some impairments 24 that don't allow DSL service. But there 25 is another pair available in that same</p>	<p style="text-align: right;">Page 69</p> <p>1 to provide the service. It's a different 2 facility now connects to the switch and 3 connects to the end user's location, so 4 we -- our loop facility assignment 5 systems would have to record that change. 6 Q Would that be the loop facility assignment 7 control system? 8 A That would be also known as LFACS, yes. 9 Q What is a repeater as something that would 10 occur on a loop? 11 A A repeater is a piece of technology that 12 essentially receives a degraded data 13 signal, regenerates it, and sends it 14 further down the line. 15 It would -- An analogy would be 16 similar to how the Indians used to use 17 smoke signals to communicate. I would 18 send a smoke signal up. The guy down the 19 road sees it. He sends his -- the same 20 smoke signal up. The next guy down the 21 road sees it, et cetera, et cetera. The 22 repeater is just the high-tech version of 23 the same thing. The signal we can send 24 only goes so far through our copper line, 25 therefore we have to repeat it to continue</p>

<p style="text-align: right;">Page 70</p> <p>1 to send it further down those same copper 2 lines 3 Q So does a repeater improve the robustness 4 of a voice signal? 5 A Repeaters are typically used to provide 6 data services, data signals 7 Q Is there any service that would be 8 impaired if a repeater were present on a 9 line? 10 A Yeah. If a repeater were present, then it 11 would interfere with DSL services 12 Q Are repeaters used on DS-1 loops? 13 A I would say they are, yes 14 Q Are they used on DLC loops? 15 A I would venture to say they probably are, 16 yes 17 Q And do you know what a DAML is, D-A-M-L? 18 A I don't know what the actual acronym 19 stands for, but I do know what a DAML is, 20 so 21 Q Please tell me what it is 22 A A DAML is a situation or an area where 23 BellSouth or any other phone company has 24 limited copper facilities, and so what 25 they do is they derive a second access</p>	<p style="text-align: right;">Page 72</p> <p>1 a loop that had a repeater on it? 2 A Yes 3 Q And would it provide data services over a 4 loop that had a DAML on it? 5 A Typically, no 6 Q Why would it choose to provide DSL over a 7 loop that had a repeater on it? 8 A You said data services. I was thinking of 9 DS-1s 10 Q Yeah, I'm starting -- okay 11 A Okay. Sorry 12 Q Well, a data service over a DS-1, why 13 would you still provide that type of 14 service over a loop that had a repeater on 15 it? 16 A If the end user who wanted to buy DS-1 17 from BellSouth was located more than, say, 18 10 or 15 thousand feet from the central 19 office, in order to provide that DS-1 20 service all the way to that end user 21 location, we would have to put a repeater 22 in the line in order to reach that end 23 user location 24 Q Would the repeater impair the data 25 services?</p>
<p style="text-align: right;">Page 71</p> <p>1 line on the same copper facility. They 2 put a piece of equipment at the end user's 3 home or business at their network 4 interface device as well as further up in 5 the infrastructure so that both the first 6 and the second lines ride on the same 7 copper facility. In other words, they 8 take the second voice signal and move it 9 into the upper frequency portion of the 10 line so they both ride the same voice -- 11 or the same copper facility 12 Q If I called that a line splitter, would I 13 be incorrect? 14 A Yes, you would be incorrect 15 Q Would a DAML impair data services over a 16 line? 17 A Yes, it does 18 Q Would that include data services other 19 than DSL? 20 A Yes, it would 21 Q Would a DAML possibly be used or in place 22 on a DS-1 loop? 23 A I would not think it would be used for 24 DS-1, no 25 Q Would BellSouth provide data services over</p>	<p style="text-align: right;">Page 73</p> <p>1 A It actually enhances it, improves it 2 Q But the repeater would impair DSL 3 services? 4 A It's not designed for DSL. It's designed 5 to repeat a DS-1 or DS-3 signal. It's not 6 designed for DSL, and so it would impair 7 the DSL signal 8 Q Could a repeater be present on an \DSL 9 capable loop? 10 A There are some companies who choose to use 11 repeaters that are designed to be used 12 with \DSL technologies to repeat the DSL 13 signal and provide it to further out 14 loops. BellSouth does not choose to use 15 repeaters with DSL 16 Q Is it a different type of repeater as 17 between as DS-1 loop and an \DSL loop? 18 A Yeah, the repeater has to be designed to 19 function and repeat the particular 20 technology that it's being asked to 21 repeat, whether it be ATM, PERM relay, 22 DS-1, ethernet, DSL, et cetera, so -- 23 they're -- even within DSL, there are 24 \DSL, IDSL, ADSL, GI/SHDSL, BDSL, HDSL, so 25 we could continue</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 Q To your knowledge, has BellSouth ever told 2 one of its retail end user customers that 3 they can't get BellSouth DSL service 4 because their facility isn't qualified? 5 A Yes We tell them that all the time 6 Q Can you state a proportion of the time 7 that that happens? 8 A I think right now, approximately 75 9 percent of BellSouth's end user loops 10 qualify for DSL service, so 25 percent do 11 not So if any of those 25 percent try to 12 order the service, we'll tell them they 13 don't qualify 14 Q Could it be possible that a certain amount 15 of line conditioning on that 25 percent 16 proportion of the loops could enable the 17 loop to carry DSL service? 18 A Yes 19 Q Do you know why BellSouth chooses not to 20 perform that line conditioning? 21 MR CULPEPPER Object to the form 22 of the question 23 A In terms of what -- we choose to perform 24 line conditioning or not perform line 25 conditioning, we have done efforts in the</p>	<p style="text-align: right;">Page 76</p> <p>1 the term routine network modification 2 means? 3 A I take the FCC -- and I'm paraphrasing a 4 little bit I know speak to it 5 specifically in my testimony, but, you 6 know, routine network modification is best 7 seen as a network modification that 8 BellSouth or other incumbent telephone 9 companies routinely perform for their own 10 retail customers 11 Q What do you mean by the word "routinely"? 12 A Routinely, in my opinion, is a 13 specific -- is a situation where you 14 would do it more often than not or that 15 you have a method and procedure that says 16 this is how we would do this as in our 17 day-to-day business 18 Q Does BellSouth have methods and procedures 19 regarding line conditioning? 20 A Yes 21 Q Are they recorded or codified somewhere? 22 A I mean, line conditioning, again, is a 23 very broad term, so there's -- we have 24 outside plant engineering guidelines that 25 we provide that talk about how to deploy</p>
<p style="text-align: right;">Page 75</p> <p>1 past where we've done programs where we've 2 removed bridge taps or we removed DAMLs or 3 we've removed load coils as a project 4 And then say this particular area would 5 qualify for DSL services if we went 6 through and removed the DAMLs and the 7 bridge taps or load coils 8 When we do those projects, it also 9 opens up and frees those facilities for 10 other CLP's DSL services Those 11 impairments are the same impairments for 12 us as they are for the CLPs So when we 13 improve the plant, it helps both sides 14 equally That, in turn, creates a 15 qualification database as to who 16 qualifies, who does not qualify We do 17 not routinely take requests for DSL and 18 then go out and trigger a line 19 conditioning requirement with the 20 exception of line station transfers, which 21 those are the only line conditioning we 22 will routinely do as a result of a DSL 23 order to someone who would not -- their 24 facilities are not currently qualified 25 Q Do you have an understanding as to what</p>	<p style="text-align: right;">Page 77</p> <p>1 lines and whether or not you would include 2 some of the repeaters or not We also 3 have guidelines that we use when we 4 develop the algorithms and code for our 5 loop qualification system And then we 6 have probably some Sprint documents that 7 say -- simply to the fact that if a person 8 doesn't qualify for DSL service, we're not 9 going to do extreme or gargantuan steps to 10 try to qualify them by doing a lot of line 11 conditioning 12 Q Did you say Sprint documents? 13 A No We have probably some documentation 14 Q Some documents? 15 A Yeah 16 Q What would be a gargantuan-type task that 17 BellSouth would not perform under your -- 18 what you've testified? 19 A There are situations where you can have 20 multiple load coils on a loop that are -- 21 that serve a design purpose historically 22 that, because of their location in the 23 outside plant, they're buried 24 Potentially they are in manholes or other 25 things The physical job to remove them</p>

<p style="text-align: right;">Page 78</p> <p>1 would be very expensive, several hundred 2 thousand dollars. And there's no way that 3 we would undergo that expense for a 4 customer that's going to pay us \$45 a 5 month for service. So it's just -- 6 that's just simply -- we just simply 7 can't qualify that customer because the 8 rearrangement would be too expensive. 9 Q Would BellSouth consider performing a line 10 station transfer in that instance if it 11 were possible? 12 A If it were possible, yes. 13 Q For the 25 percent roughly of BellSouth 14 loops that don't qualify for DSL service, 15 for example -- 16 A Uh-huh. 17 Q -- would BellSouth consider performing a 18 line station transfer? 19 A Line station transfers, if one is 20 available, that allows those loops to be 21 qualified for service, so they fall into 22 the 75-percent category. 23 Q Who would determine whether a line 24 station -- am I saying this correctly, is 25 it line station transfer or line of</p>	<p style="text-align: right;">Page 80</p> <p>1 and they can look at any potentially 2 available loop to serve an end user, the 3 same as we look at any potential available 4 loop facility to serve the end user. I 5 don't know what the parameters are, the 6 designed parameters that would be required 7 for a DS-1 loop or other types of loops. 8 But I would assume CLECs as well as 9 BellSouth are both looking at those 10 facility assignments for facilities that 11 meet that criteria. 12 Q Do you have an understanding as to what 13 the term designed loop means? 14 A Uh-huh. 15 Q And what does that refer to? 16 A A designed loop is one that requires an 17 engineer, typically, or an engineering 18 assistant to go through and design the 19 loop to provide the service. It 20 requires -- It's essentially any kind of 21 service that's a little more complex and 22 requires some special circumstances with 23 which to provide those services. 24 Q Can a DS-1 loop be a designed loop? 25 A I think so, but I'm not sure.</p>
<p style="text-align: right;">Page 79</p> <p>1 station? 2 A Line and station line. 3 Q Who would determine whether a line and 4 station transfer is possible? 5 A There is an -- actually an algorithm in 6 our loop qualification system that reviews 7 the loop facility assignment and control 8 system, LFACS database, to determine if 9 there are what are considered available 10 copper or available facilities to support 11 that end user location. That algorithm is 12 what determines whether a line and station 13 transfer is required. 14 Q So, thus, could I characterize that as 15 being an automated determination? 16 A In our DSL system, yes, it's an automated 17 determination. 18 Q With regard to other loops, if a line and 19 station transfer were possible, would that 20 be recorded in the loop assignment control 21 system? 22 A Other loops meaning 23 Q For example, a DS-1 loop 24 A As far as I know, the entire loop facility 25 assignment database is available to CLECs.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q Is an xDSL capable loop a designed loop? 2 A Typically not. 3 Q Do you have an understanding about where 4 information is housed regarding a designed 5 loop? 6 A To my knowledge, all of our loop 7 facilities are databased in our LFACS 8 system, whether they're designed or 9 nondesigned, so. 10 Q Are you familiar with a database of 11 BellSouth's called a work force 12 administration database, WFA? 13 A Yes. 14 Q And do you know what's housed in that 15 database? 16 A I'm not so sure that it's a database.. 17 although I guess it has a system -- it 18 probably does have an associated 19 database. But my understanding of work 20 force administration is it's a ticketing 21 system for job function, that it creates 22 essentially jobs or products -- projects 23 for individual -- well, work force people 24 to perform. 25 Q Do you have an understanding as to whether</p>

<p style="text-align: right;">Page 82</p> <p>1 the WFA is a separate system from LFACS?</p> <p>2 A It is separate</p> <p>3 Q Do you know whether those two systems can</p> <p>4 share information directly between each</p> <p>5 other?</p> <p>6 A They probably have some interface between</p> <p>7 the two. They're used in different parts</p> <p>8 of the process, and LFACS is a loop</p> <p>9 facility assignment system, WFA is a work</p> <p>10 force administration system that helps</p> <p>11 with the provisioning of services. It's</p> <p>12 not a facility assignment database</p> <p>13 Q So the WFA, am I correct, houses trouble</p> <p>14 ticket information regarding loops?</p> <p>15 A I don't believe it's trouble ticket</p> <p>16 information. It may include that, but</p> <p>17 it's predominantly used for provisioning</p> <p>18 services</p> <p>19 Q Would the information in WFA, to your</p> <p>20 knowledge, appear in LFACS?</p> <p>21 A I don't know</p> <p>22 Q Do you know whether CLPs have access to</p> <p>23 the WFA?</p> <p>24 A I don't know</p> <p>25 (DEPOSITION EXHIBIT NO. 7 WAS MARKED)</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Please turn to the page of this exhibit</p> <p>2 that says 10 on the bottom. And I direct</p> <p>3 your attention to in the middle of the</p> <p>4 page, in, line conditioning, and I ask</p> <p>5 you to review this rule and tell me, do</p> <p>6 you find the words routine network</p> <p>7 modification in this rule?</p> <p>8 (PAUSE)</p> <p>9 MR. CULPEPPER: Object to the form</p> <p>10 of the question. It's reviewing the</p> <p>11 document.</p> <p>12 (DISCUSSION OFF THE RECORD)</p> <p>13 A Could you repeat your question for me</p> <p>14 again? This is apparently a long section,</p> <p>15 so I just want to make sure I answer your</p> <p>16 question.</p> <p>17 Q In the portion of the rule that begins</p> <p>18 in, line conditioning, and going forward</p> <p>19 down to in, maintenance and repair, in</p> <p>20 that section, do the words routine network</p> <p>21 modification appear?</p> <p>22 A No, I do not see those three words</p> <p>23 anywhere here.</p> <p>24 Q Are there circumstances under which</p> <p>25 BellSouth would remove a load coil if it</p>
<p style="text-align: right;">Page 83</p> <p>1 Q I'm handing you a document marked Exhibit</p> <p>2 7. Now, we've seen the top page of this</p> <p>3 exhibit before for Exhibit 4. This is the</p> <p>4 top page of the Triennial Review Order.</p> <p>5 Again, it's just a portion.</p> <p>6 Do you see on the second page of</p> <p>7 this exhibit at the top labeled Appendix</p> <p>8 B, final rules?</p> <p>9 A Yes, I do.</p> <p>10 Q Would you accept these are the final rules</p> <p>11 that were adopted in the Triennial Review</p> <p>12 Order?</p> <p>13 A Subject to check, sure.</p> <p>14 Q Just for your further clarification, I've</p> <p>15 covered it up, but if you notice, the item</p> <p>16 number FCC 03-36 at the top --</p> <p>17 A Yes.</p> <p>18 Q -- that's the indicator of the order</p> <p>19 number.</p> <p>20 A Okay.</p> <p>21 Q And there can only be one order number for</p> <p>22 any order, so that's the way -- one way</p> <p>23 you can tell that the pages all belong</p> <p>24 together.</p> <p>25 A Okay.</p>	<p style="text-align: right;">Page 85</p> <p>1 negatively effected DSL service?</p> <p>2 A There may be specific isolated</p> <p>3 circumstances where we would remove a load</p> <p>4 coil that affects DSL service. If --</p> <p>5 There is typical design parameters, which</p> <p>6 routine were normal for the network, is</p> <p>7 that load coils are put on the outside</p> <p>8 plant loop facilities at 18,000 feet and</p> <p>9 beyond. BellSouth stops qualifying DSL</p> <p>10 services at 18,000 feet. And the primary</p> <p>11 reason for that is because of the presence</p> <p>12 of load coils. So load coils routinely</p> <p>13 are typically -- disqualify the customer</p> <p>14 for DSL service. And so the two don't</p> <p>15 typically interchange.</p> <p>16 What can happen is that there can</p> <p>17 be a load coil on the facility that's in</p> <p>18 error. There have been records where it</p> <p>19 -- indicating a load coil. We call those</p> <p>20 erroneous load coils. And in those</p> <p>21 isolated situations, we make a</p> <p>22 determination of whether it's more cost</p> <p>23 effective to remove the load coil or to go</p> <p>24 ahead and disqualify the service and tell</p> <p>25 the customer they can -- even though they</p>

<p style="text-align: right;">Page 86</p> <p>1 thought they could get DSL, they actually 2 cannot 3 Q What's your understanding of the term cost 4 effective, as you just used it? 5 A Essentially, we look to see if the removal 6 of the load coil is easy, something that 7 can quickly be done. It's convenient, 8 that type of thing. It's a local 9 engineering judgment. It's -- Routinely, 10 it's not easy. It's not something simple 11 or -- can be done, so we often do not do 12 it. Our normal response to the customers 13 is that they cannot get DSL service even 14 though we originally indicated they 15 qualify. 16 Q And what factor does cost -- financial 17 cost to BellSouth play in that 18 determination, in whether a load coil 19 would be removed? 20 A I'm trying to think through -- remember if 21 there's any guidelines that were 22 provided. Typically, local engineering 23 judgment is going to be along the lines of 24 if they could do something within a single 25 day or as a part of a day, if it's a</p>	<p style="text-align: right;">Page 88</p> <p>1 So the cable has a number of pairs 2 associated with it. So when you talk 3 about removing a load coil, you're 4 typically removing it on an entire cable, 5 which is multiple pairs, even though those 6 pairs may end up going to a number of 7 different places. And so that's why you 8 have to determine if it serves a design 9 purpose. It's not an individual device on 10 an individual loop. 11 Q Can you tell me typically how many pair 12 would be in a cable? 13 A I believe standard is about 25 pairs in a 14 particular cable. And then they obviously 15 have lots of cables that combine those 16 complements, put them together. It just 17 depends on the design of the particular 18 cable. 19 Q Would that cable service 25 then different 20 locations? 21 A It would service -- I mean, I've heard 22 referred to as 25-pair complement, but 23 that would serve 25 voice customers that 24 could be all at the same location. They 25 could all be 25 lines in this same</p>
<p style="text-align: right;">Page 87</p> <p>1 single trip to remove the load coils. The 2 problem with load coils is they're not 3 located on one line. They're 4 typically -- It's in a package, and so 5 they'll affect multiple lines in a cable. 6 And so you can't just go in and remove the 7 one load coil for this one customer. You 8 have to think through, if I remove all the 9 load coils in this cable, what other 10 customers are going to be impacted? So to 11 that degree, almost always we determine we 12 can't remove them. But we do let the 13 engineers make that judgment, then if for 14 some reason they realize that there was a 15 mistake and they could easily do that, we 16 give them the option of doing that. 17 Q Explain to me further what you meant by 18 load coils occur in a package. 19 A It's -- What you have is it comes in 20 a -- for the physical manifestation of a 21 load coil, what they actually are is 22 essentially a black box, for lack of a 23 better term, that you connect multiple 24 pairs through so the entire cable will be 25 loaded or entire cable will be unloaded</p>	<p style="text-align: right;">Page 89</p> <p>1 office. It could be 25 different houses 2 or 25 different apartments. 3 Q Would BellSouth remove a load coil from a 4 DS-1 loop that was meant to carry data? 5 A I believe if they wanted to use a facility 6 that had a load coil they could remove, it 7 probably would for a DS-1 loop. But, 8 again, it would rely -- it would 9 determine -- it would depend upon the 10 relative cost of that removal. 11 Q Do load coils only occur on copper loops? 12 A Their design purpose is for long copper 13 loops. The purpose is to improve the 14 voice quality on long copper loops, so 15 that is the loops that they have been 16 deployed on historically. And so they 17 may, because of reuse and other reasons, 18 be on loops that are being used for other 19 services besides voice, but the original 20 design purpose was for voice services on 21 long copper loops. 22 Q Do load coils occur on fiber loops? 23 A No. 24 Q Do bridge taps occur on fiber loops? 25 A No.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q If a BellSouth customer was served with a 2 loop that had an erroneous load coil on 3 it -- 4 A Uh-huh 5 Q -- would the customer be charged for the 6 removal of that load coil? 7 A To clarify a little bit, if there's an 8 erroneous load coil, the DSL service 9 wouldn't actually work until the load coil 10 was removed. And so it's -- again, it's 11 a judgment as to whether that is done in 12 order to be able to start providing 13 service. So they wouldn't have service 14 and then see about the load coil. They 15 would be ordering the service to see if 16 they could get the service. But typically 17 we do not charge the customers for -- the 18 end user customer for that conditioning if 19 we determine it's an error on our part. 20 Q Do you have any other understanding as to 21 whether BellSouth would charge a CLP for 22 the removal of an erroneous load coil? 23 A I don't know. 24 Q I direct you to your testimony, page 11, 25 marked as Exhibit 2, lines 19 to 21. And</p>	<p style="text-align: right;">Page 92</p> <p>1 Q Do you have an understanding about how 2 much -- what those rates are sitting here 3 today? 4 A It's a special construction process, my 5 understanding of that is you would request 6 a particular construction job and there 7 are rates governing the different 8 functions, but an engineer would have to 9 determine how much -- how many hours it 10 would take, how much time it would take to 11 do that kind of work, and come back with 12 an estimate of what that special 13 construction cost would be. And then, of 14 course, the CLP would then say, go ahead 15 or do not go ahead with the work. 16 Q So would it then be a case-by-case basis 17 how that rate would be set? 18 A It's -- Removing the load coils is going 19 to -- the cost is on a case-by-case 20 basis, determines the location of the load 21 coil, how many have to be removed, what 22 the nature would be. That's why it 23 requires an engineer to figure that out 24 and determine what the actual cost would 25 be associated with that.</p>
<p style="text-align: right;">Page 91</p> <p>1 it states here that BellSouth will remove 2 load coils on loops and subloops that are 3 greater than 18,000 feet in length at 4 rates pursuant to BellSouth's special 5 construction process contained in the FCC 6 BellSouth Tariff No. 2. Do you see that? 7 A Yes, I do. 8 Q Have you ever viewed this section of 9 BellSouth Tariff No. 2? 10 A I have not. 11 (DEPOSITION EXHIBIT NO. 8 WAS MARKED.) 12 Q I'm handing you a document that's quite 13 voluminous. I only have two copies. If 14 you need to take some extra time to review 15 with your counsel, feel free. 16 Can you direct me to the section 17 of this tariff -- do you have an 18 understanding about where in this tariff 19 would be the rate that BellSouth would 20 charge to remove load coils on loops and 21 subloops greater than 18,000 feet in 22 length? 23 A I could take some time, probably read this 24 and find it. I don't know exactly what 25 page it's located on now.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q What are the nature of the costs 2 associated with load coil removal? 3 A First is identifying the load coil, 4 identifying their location, identifying 5 what services they are supporting, what 6 impacts they have, which is the 7 engineering and design work. The second 8 piece would actually be physically going 9 out with a construction crew and 10 potentially digging up the load coils, if 11 they're buried, or finding them on a 12 pole. And then rewiring the loop 13 facilities by, you know, potentially 14 cutting out or removing the load coil and 15 then reconnecting the loop facilities. 16 And those all have to be coordinated with 17 the underlying -- you've got obviously 18 underlying voice services that are going 19 through that facility that are available, 20 so you have to coordinate that as well as 21 you have to make sure that you're not 22 negatively impacting the voice customers 23 that are all impacted -- currently be 24 serviced on that facility. 25 Q Would labor costs be a portion of the</p>

<p style="text-align: right;">Page 94</p> <p>1 costs that BellSouth would incur?</p> <p>2 A Yes</p> <p>3 Q Would it be the largest portion?</p> <p>4 A Yes, I believe labor would be the largest</p> <p>5 portion</p> <p>6 Q And regarding the rates -- and</p> <p>7 understanding you don't know exactly what</p> <p>8 they are, but do you have an</p> <p>9 understanding as to how those rates were</p> <p>10 derived for this Tariff No. 2?</p> <p>11 A I don't know how those rates were derived</p> <p>12 Q Do you know whether they are in compliance</p> <p>13 with TELRIC?</p> <p>14 A I believe they're not derived from TELRIC</p> <p>15 Q Please return to your testimony, page 12</p> <p>16 at lines 19 to 20. You state that</p> <p>17 BellSouth's offer to the CLPs exceeds its</p> <p>18 FCC requirements for line conditioning.</p> <p>19 What do you mean by that statement?</p> <p>20 A As I said earlier today, line conditioning</p> <p>21 is a very broad term, include a lot of</p> <p>22 different -- essentially functions that</p> <p>23 can perform to condition lines. There are</p> <p>24 some forms of line condition we're</p> <p>25 obligated to provide and some forms of</p>	<p style="text-align: right;">Page 96</p> <p>1 requirements for line conditioning?</p> <p>2 A It's my understanding that the FCC</p> <p>3 requires us to perform the same line</p> <p>4 conditioning for CLPs that we provide for</p> <p>5 ourselves. And this language here</p> <p>6 provides the CLECs more line conditioning</p> <p>7 than we routinely perform for ourselves.</p> <p>8 So based on that, I believe it exceeds the</p> <p>9 requirements that the FCC has put upon us.</p> <p>10 Q So is it your position that there is line</p> <p>11 conditioning that may be performed that is</p> <p>12 not incumbent within the FCC's line</p> <p>13 conditioning rule?</p> <p>14 A Yes.</p> <p>15 Q And, again, can you explain to me what</p> <p>16 line conditioning could be performed that</p> <p>17 would not be required in the FCC line</p> <p>18 conditioning rule?</p> <p>19 A Well, use this example or the example of</p> <p>20 conditioning lines or removing load coils</p> <p>21 longer than 18,000 feet. BellSouth does</p> <p>22 not remove load coils beyond 18,000 feet</p> <p>23 because it degrades the voice service.</p> <p>24 That's our approach and our engineering</p> <p>25 guidelines. CLPs can ask for that and can</p>
<p style="text-align: right;">Page 95</p> <p>1 line conditioning we're not obligated to</p> <p>2 provide. And what I'm simply saying here</p> <p>3 is that BellSouth's offer to CLPs exceeds</p> <p>4 the FCC's requirements for line</p> <p>5 conditioning, in other words, that we are</p> <p>6 doing more than we're obligated to provide</p> <p>7 in this particular instance.</p> <p>8 Q And if you could please return to Exhibit</p> <p>9 3.</p> <p>10 A Okay.</p> <p>11 Q Which is Attachment 2 of the</p> <p>12 interconnection agreement at issue in this</p> <p>13 case. The page that's numbered 24 at the</p> <p>14 bottom.</p> <p>15 A Okay.</p> <p>16 Q And section 2.12.3. Is it your position</p> <p>17 that the BellSouth language provided for</p> <p>18 this section exceeds the FCC's line</p> <p>19 conditioning requirements?</p> <p>20 MR. CULPEPPER: Object to the form</p> <p>21 of the question.</p> <p>22 A: Would you repeat your question for me?</p> <p>23 Q: Is it your position that the BellSouth</p> <p>24 language provided here for this section</p> <p>25 comprises an offer that exceeds the FCC's</p>	<p style="text-align: right;">Page 97</p> <p>1 even have that done outside through the</p> <p>2 special construction process, but it's --</p> <p>3 we're not obligated to provide that since</p> <p>4 we don't do it for ourselves.</p> <p>5 Q And you testified that a routine network</p> <p>6 modification is something for which</p> <p>7 BellSouth has methods and procedures or is</p> <p>8 something that occurs more often than</p> <p>9 not --</p> <p>10 A Yes.</p> <p>11 Q -- is that correct?</p> <p>12 A Not the most elegant definition, but that</p> <p>13 is my definition of it.</p> <p>14 Q Is BellSouth willing to perform routine</p> <p>15 network modifications for CLPs?</p> <p>16 A Yes.</p> <p>17 Q And is that offer considered by you to be</p> <p>18 compliant with the FCC's line conditioning</p> <p>19 rules?</p> <p>20 A Yes.</p> <p>21 Q Now, isn't it true that the services</p> <p>22 provided over a particular loop can change</p> <p>23 over time?</p> <p>24 A Definitely.</p> <p>25 Q Would it then be true that the network</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 design purpose for a loop would change 2 over time to address each service? 3 A Yes 4 Q You've testified that -- at page 13 of 5 your testimony, lines 11 to 12, the CLP 6 may request removal of any unnecessary and 7 non-excessive bridge tap between 0 and 8 2,500 feet that serves no network design 9 purpose. Now, just to clarify. Something 10 in your opinion that serves no network 11 design purpose is unnecessary and 12 excessive? 13 A Yeah, I would agree with that 14 Q Can you explain to me that the -- 15 (INTERRUPTION) 16 A I apologize for that 17 Q No problem 18 When you state that the CLP may 19 request removal of bridge tap that serves 20 no network design purpose, would that be 21 the design purpose specific to the service 22 desired to be provided over that loop by 23 the CLP? 24 A I'm not sure of your question. Can you 25 rephrase that for me?</p>	<p style="text-align: right;">Page 100</p> <p>1 A Bridge taps are a technique for allowing 2 us to work quickly and cost effectively to 3 provision voice services to multiple 4 locations and more efficiently use our 5 plant. Bridge taps between 0 and 2,500 6 feet are not known to disturb DSL services 7 because DSL has been designed to work, 8 even though bridge taps of that length are 9 available. 10 Q All right. I think you're somewhat ahead 11 of me. 12 A All right. Sorry. 13 Q I think the answer to my question was, 14 yes, bridge tap does serve a network 15 design purpose -- 16 A Uh-huh. 17 Q -- for voice services? 18 A Yes, it does. 19 Q Now, does bridge tap serve a network 20 design purpose for data services? 21 A To a degree, you could use a bridge tap 22 to -- I mean, I guess the easiest way to 23 explain this one is to talk about what a 24 bridge tap is. You can think of it as a 25 tree in the wintertime in that the trunk</p>
<p style="text-align: right;">Page 99</p> <p>1 Q When you use the phrase, serves no network 2 design purpose, does that refer to no 3 network design purpose for what the CLEC 4 wants to use the loop for? 5 A I am assuming that -- which I know network 6 design purpose is, we're actually talking 7 about network design purposes of loops 8 that BellSouth is currently -- currently 9 would have, in other words, would be a 10 network design purpose for BellSouth as 11 opposed to a CLEC. 12 Q So tell me if I have you correct. That 13 the network design purpose referenced here 14 in your testimony refers to network design 15 purpose regarding the current services 16 provided over the loop? 17 A Either the current services or we've got a 18 particular design for the outside plant 19 infrastructure that incorporates a number 20 of bridge taps where -- we need for some 21 reason, and I'm not sure what they would 22 be. For some reason, we would want to 23 have those bridge taps to be available. 24 Q Do bridge taps serve a network design 25 purpose for purposes of voice traffic?</p>	<p style="text-align: right;">Page 101</p> <p>1 of the tree has a central office. And 2 there are multiple limbs that go out from 3 that office to multiple different 4 locations. Those multiple limbs, 5 depending on which end user decides to 6 order services and which choose to use 7 that facility, that one limb becomes the 8 copper facility. The remaining limbs are 9 what are referred to as the bridge taps. 10 They're just hanging out there unused at 11 the moment. 12 So what can happen is you could 13 have a -- you're going -- using one 14 particular limb, but you may have a design 15 reason that you're going to move the 16 facility and do rearrangements and use a 17 different limb in the future. But that's 18 the reason it's there -- or those services 19 are there. To the degree the extra limbs 20 interfere with the data service, we try to 21 remove them, that's removal of the bridge 22 taps. 23 But at any given time, a facility 24 that has lots of bridge taps that's open 25 or available, whether it's a data service</p>

<p style="text-align: right;">Page 102</p> <p>1 or voice service, whatever end user is 2 going to be using that service, that 3 determines which limb of that bridge tap 4 is available or is going to be used. So 5 you can -- Just because a facility has 6 bridge taps before you use it doesn't mean 7 it's not available for a data service. To 8 the degree the extra limbs, as you can -- 9 I described them, are not necessary, they 10 can be removed to help facility -- or the 11 service in its performance. 12 Q All right. At page 9 of your testimony, I 13 just want to be clear, lines 10 to 12. 14 You state that the same inductor that 15 reduces high-frequency noise also 16 interferes with high-frequency data 17 signals. Are you referring to, by the 18 word "same inductor", a load coil? 19 A Yes. 20 Q A low pass filter? 21 A Yes. 22 Q Do these lines regard bridge taps? 23 A A bridge tap is not an inductive device 24 like a load coil or a low pass filter. 25 Q So is it your testimony that bridge taps</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Now, in general, these bullet points you 2 have on page 13, one, two, three, when you 3 wrote this testimony, were you -- did you 4 write these points with regard only to DSL 5 services? 6 A I mean, I believe our intent and our focus 7 is to support DSL services, but CLPs could 8 use these facilities or services for other 9 means, if they chose to. 10 Q So the modifications you describe at one, 11 two, and three, BellSouth would consider 12 performing for a non-DSL loop? 13 A I believe we'll do these conditionings at 14 the request of the CLP for whatever reason 15 they may have for them. 16 Q If a CLP wanted conditioning to be done to 17 provide voice services, would you do that? 18 A I believe so. I mean, number one says, 19 any copper loop being ordered by a CLP at 20 over 6,000 feet of combined bridge tap 21 would be modified. 22 Q And could you return, again, to what was 23 marked as Exhibit 3, which is Attachment 24 2. 25 A Okay.</p>
<p style="text-align: right;">Page 103</p> <p>1 do not always impair data services'. 2 A That is correct, they do not always 3 impair. 4 Q Is it your testimony that bridge taps may 5 sometimes serve a network design purpose 6 for data services? 7 A Yes. 8 Q And does that occur -- strike that. 9 Under which circumstances would 10 bridge tap serve a network design purpose 11 for a data service? 12 A I believe prior to provisioning when they 13 determine which facilities would be 14 available for that data service. 15 Q Would the length of the bridge tap be a 16 factor in determining whether it serves a 17 network design purpose for the data 18 service? 19 A It's a determination of whether or not the 20 bridge taps would interfere with the data 21 service. So, yes, it would be a factor. 22 Q Would it be fair to say a longer bridge 23 tap has a better chance of impairing data 24 services? 25 A Yes, it does.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q Again, please turn to page 24. And please 2 review both sections 2 12 3 and 2 12 4. 3 Do these provisions regard only 4 what a CLEC would request in order to 5 provide DSL service? 6 (PAUSE) 7 A I don't see anything in either 2 12 3 or 8 2 12 4 that limits this just, I guess, to 9 loops that would be used to provide DSL 10 service. 11 Q And, Mr. Fogle, if you could please return 12 to Exhibit 7. 13 A Okay. 14 Q And, again, look at the page that's 15 numbered 10 at the bottom. It sets forth 16 the rule numbered iii, line conditioning. 17 Do you believe that this rule applies only 18 to line conditioning for DSL services? 19 MR. CULPEPPER: Object to the form 20 of the question. 21 A I don't see anything in this document that 22 limits it to just DSL services. 23 Q All right. And, again, turning to your 24 testimony, same page, 13, lines 12 to 13. 25 You state that, under the circumstances</p>

<p style="text-align: right;">Page 106</p> <p>1 outlined in this bullet 3, the rates would 2 be pursuant to BellSouth's special 3 construction process in BellSouth FCC 4 Tariff No. 2. I earlier showed you 5 Exhibit 8, which is a copy of the special 6 construction process in BellSouth Tariff 7 2. 8 A Uh-huh. 9 Q Sitting here, could you direct me to the 10 portion of this tariff that would tell a 11 CLP what the rates for bridge tap removal 12 would be under these circumstances? 13 A No, I cannot. 14 Q And, again, page 13 of your testimony, you 15 discuss at lines 17 to 19 an industry 16 collaborative. Do you see that? 17 A Yes, I do. 18 Q What are you referring to in those lines? 19 A There is what we term internally an 20 industry collaborative, which is a set of 21 meetings that CLECs and BellSouth 22 participate and engage in, specifically to 23 discuss developing rules, methods, and 24 procedures, complex issues associated with 25 line conditioning, line sharing, most of</p>	<p style="text-align: right;">Page 108</p> <p>1 Q And can you give me roughly the month and 2 year of the meetings that you attended? 3 A I attended a couple, I believe, in the 4 latter half of last year. There were some 5 specific issues that were coming up at the 6 time that I had some history on, some 7 expertise on that I could provide some 8 help to the collaborative, so I 9 participated at that time. 10 Q And what were those issues that you 11 provided help with? 12 A You're really testing my memory here. It 13 had to do with the DSL services and I 14 believe some qualification information and 15 also copper retirement rules -- rules on 16 copper retirement. 17 Q Qualification information, are you 18 referring to the process by which 19 BellSouth determines if a loop can carry 20 DSL service? 21 A Yes, what BellSouth's qualification 22 process is. 23 Q Did you discuss the issue of bridge tap 24 removal when you went to these meetings? 25 A I don't believe I have, no.</p>
<p style="text-align: right;">Page 107</p> <p>1 the services and issues resulting in, 2 basically, CLECs providing their DSL 3 services in competition against BellSouth. 4 Q Does this industry collaborative have a 5 proper name? 6 A I don't know, to tell you the truth, if it 7 has a proper name. It's just simply known 8 as the industry collaborative internally. 9 We've referred to it as such in front of 10 several commissions and they seem to 11 always know what I'm talking about, so 12 Q And does the collaborative regard the 13 relations between CLPs and BellSouth in 14 the whole BellSouth region? 15 A Yes, I believe it does cover the entire 16 region. 17 Q And do you know when it was established? 18 A I know it's been going on for a number of 19 years. I don't know exactly when it was 20 established. 21 Q Do they have meetings at which people 22 convene to discuss -- 23 A Yes, they do. 24 Q Have you attended these meetings? 25 A I've attended a few of them.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q Do you know what, if any, resolution the 2 industry collaborative reached regarding 3 the removal of bridge taps? 4 A There was at -- and I don't know exactly 5 which meeting it was, they actually put 6 this exact proposal of these three bullet 7 points to a vote in the collaborative, and 8 the CLECs voted this was the approach that 9 they preferred. And so that is what we 10 agreed to. Even though it exceeded our 11 obligations, we felt in the interest of 12 compromise and in the interest of help 13 supporting CLECs, it would be best to go 14 ahead and work with what they have 15 accepted. 16 Q And by "what they have accepted" are you 17 referring to your bullet points one, two, 18 three on page 13? 19 A That is correct. 20 Q And is the final outcome of this bridge 21 tap discussion by the collaborative 22 codified somewhere? 23 A I mean, I believe they have minutes and 24 notes. 25 Q Do BellSouth personnel, to your knowledge,</p>

<p style="text-align: right;">Page 110</p> <p>1 routinely attend collaborative meetings?</p> <p>2 A Yes</p> <p>3 Q Do you know who those personnel are?</p> <p>4 A It depends on the issue. I know in terms</p> <p>5 of line conditioning, the person who would</p> <p>6 be most involved with a collaborative</p> <p>7 would be Jerry Latham</p> <p>8 Q Have you ever discussed with Jerry what he</p> <p>9 learns or what he does at those meetings?</p> <p>10 A Uh-huh. Yes, I have</p> <p>11 Q And what does he describe to you he's</p> <p>12 learned at those meetings?</p> <p>13 A Essentially that, as we all know, lots of</p> <p>14 CLECs have lots of uses for why they want</p> <p>15 we use our facilities. It's very</p> <p>16 difficult and complex for them to agree</p> <p>17 with each other as to what -- standards</p> <p>18 that they want. It's important for</p> <p>19 BellSouth to try to work to a common</p> <p>20 standard. And so he's, you know, learned</p> <p>21 how to work with the CLECs in creating, in</p> <p>22 this particular case, a common approach</p> <p>23 for bridge tap removals that would meet</p> <p>24 the majority of the CLEC's needs</p> <p>25 Q Was Jerry Latham present at the meetings?</p>	<p style="text-align: right;">Page 112</p> <p>1 notes for the industry collaborative were</p> <p>2 produced to the Joint Petitioners in this</p> <p>3 case?</p> <p>4 A I'm not aware</p> <p>5 Q Did you review the documents that were</p> <p>6 produced in response to the request for</p> <p>7 production associated with this issue,</p> <p>8 which is number 220?</p> <p>9 A I believe I reviewed some of them, yes</p> <p>10 Q To use the vernacular, did you see the</p> <p>11 production right before it went out the</p> <p>12 door?</p> <p>13 A I don't believe I saw it right before it</p> <p>14 went out the door. I reviewed it -- some</p> <p>15 of it as it was being developed, but not</p> <p>16 right before it left</p> <p>17 Q Do you know what the contents are of the</p> <p>18 final adoption of a policy regarding</p> <p>19 bridge tap removal that the industry</p> <p>20 collaborative came up with?</p> <p>21 A Could you ask that question again?</p> <p>22 Q Was it a codified policy that the industry</p> <p>23 collaborative adopted regarding bridge tap</p> <p>24 removal?</p> <p>25 A Codified policy, do you mean was it</p>
<p style="text-align: right;">Page 111</p> <p>1 where the bridge tap removal proposal was</p> <p>2 quoted and adopted?</p> <p>3 A I don't know if he was present</p> <p>4 Q Do you know if any BellSouth personnel was</p> <p>5 present?</p> <p>6 A I'm confident at least one BellSouth</p> <p>7 personnel was present, but I wouldn't</p> <p>8 necessarily know who that would be</p> <p>9 Q When someone attends one of these industry</p> <p>10 collaboratives, are they later provided</p> <p>11 with a copy of those minutes or notes that</p> <p>12 you mentioned?</p> <p>13 A Yes, they are</p> <p>14 Q Do you have any reason to believe that one</p> <p>15 or more BellSouth personnel would not have</p> <p>16 those minutes or notes in their possession</p> <p>17 at this time?</p> <p>18 A I would gather at least somebody does</p> <p>19 Probably the participants in the</p> <p>20 collaborative would have copies of the</p> <p>21 minutes and notes. I know I have copies</p> <p>22 of minutes and notes from certain meetings</p> <p>23 of the collaborative, but certainly not</p> <p>24 all of them</p> <p>25 Q Are you aware of whether any minutes or</p>	<p style="text-align: right;">Page 113</p> <p>1 written down or --</p> <p>2 Q Was it written down?</p> <p>3 A I believe it was captured in the minutes</p> <p>4 from that meeting</p> <p>5 Q Do you know whether it contained specific</p> <p>6 terms and conditions as to how bridge tap</p> <p>7 removal would be priced?</p> <p>8 A I believe it contains pretty closely to</p> <p>9 what I included in my testimony, which is</p> <p>10 the three conditions of which we will</p> <p>11 remove bridge taps and what rates would be</p> <p>12 effective for each condition</p> <p>13 Q Do you know whether the policy or final</p> <p>14 proposal included terms governing how</p> <p>15 bridge tap removal would be ordered?</p> <p>16 A I don't know</p> <p>17 Q And, finally, lines 22 to 23 of your</p> <p>18 testimony at page 13, you state that</p> <p>19 negotiations between the parties should be</p> <p>20 pursuant to a separate agreement. And by</p> <p>21 "negotiations", I think you're referring</p> <p>22 to line conditioning beyond what BellSouth</p> <p>23 performs for its own customers, is that</p> <p>24 correct?</p> <p>25 A Yes</p>

<p style="text-align: right;">Page 114</p> <p>1 Q And why do you state that there should be 2 a separate agreement to govern those terms 3 and conditions? 4 A Well, it's not -- if BellSouth 5 voluntarily offers to do something or add 6 a service that's outside the 251 7 obligation, that it needs to be treated as 8 such, then either have a separate 9 agreement or at least not be subject to 10 arbitration -- in a 251 arbitration, 11 simply because it's not a 251 obligation 12 Q Do you have a position as to what the 13 North Carolina Utilities Commission's 14 jurisdiction would be regarding the 15 outcome of the bridge tap removal sections 16 of the interconnection agreement in this 17 case? 18 MR CULPEPPER Object to the form 19 of the question 20 A Yeah, I'm not sure what your question -- 21 I'm not sure what position I could take 22 with that 23 Q Does the North Carolina Utilities 24 Commission, in your opinion, only have the 25 authority to make an order in this case to</p>	<p style="text-align: right;">Page 116</p> <p>1 lack of better term, a commercial 2 agreement It's an agreement between two 3 companies to provide a service, one to 4 another 5 And in this case, the three types 6 of line conditioning that we're talking 7 about, we have one that we'll do at no 8 charge, one that we have rates and terms 9 in this attachment, and a third option is 10 already covered in a tariff So it's 11 available 12 Q What kinds of terms and conditions do you 13 think would need to go into such a 14 separate agreement? 15 A Any terms and conditions that would be 16 outside the scope of a 251 obligation To 17 the degree they bind BellSouth, then we 18 would expect to develop those under a 19 separate agreement 20 Q Would the rates be separately negotiated? 21 A If the rates aren't covered in Attachment 22 2 of the interconnection agreement or are 23 already covered in a tariff, then they 24 would be negotiated as part of a separate 25 agreement</p>
<p style="text-align: right;">Page 115</p> <p>1 the extent that it deals with a subject 2 that is appropriately dealt with under a 3 Section 251 arbitration? 4 A It's my understanding, as we are 5 conducting a Section 251 arbitration, 6 which -- it's my understanding that the 7 only things we should be discussing and 8 working through are obligations under 9 Section 251 I believe the North Carolina 10 Utility Commission may have different 11 perspectives of what our obligations under 12 251 -- under Section 251 than BellSouth, 13 but I believe it's appropriate that we're 14 only dealing with Section 251 issues here 15 Q Have any CLPs negotiated a separate 16 agreement to govern these terms and 17 conditions discussed at page 13? 18 A I don't know if that's the case or not 19 Q Do you know whether any CLPs have 20 requested such negotiations? 21 A I don't know 22 Q In your mind, as you think about this 23 separate agreement, would it be an 24 addendum to an interconnection agreement? 25 A No I think it would just be a -- for</p>	<p style="text-align: right;">Page 117</p> <p>1 Q Would the billing and collection of 2 payment for those services need to be 3 included in this separate agreement? 4 A Yeah The separate agreement would look 5 just like any other commercial agreement 6 between two companies in that it would 7 include ordering information, what 8 services are to be performed, what's 9 expected of both parties, and then, of 10 course, billing, and then they always 11 require two to three pages of legal 12 documentation to protect the two companies 13 in that agreement 14 Q And in your time at BellSouth, have you 15 ever negotiated a commercial contract with 16 another telecommunications carrier? 17 A Yes 18 Q And what type of service was covered in 19 that contract? 20 A Professional services In this particular 21 case, it was installation work 22 Q Was this contract then obligating 23 BellSouth to send its personnel to go work 24 somewhere in exchange for which it got 25 paid?</p>

<p style="text-align: right;">Page 118</p> <p>1 A That's correct</p> <p>2 Q Were there any other types of agreements</p> <p>3 that you negotiated?</p> <p>4 A I have negotiated information service</p> <p>5 agreements. I'm trying to think. Those</p> <p>6 are the two, professional services and</p> <p>7 information services.</p> <p>8 Q How many such agreements did you</p> <p>9 negotiate, approximately?</p> <p>10 A Been involved in negotiations, probably in</p> <p>11 five or six different such agreements.</p> <p>12 Q And, to the best of your recollection, how</p> <p>13 long a time period was it from the</p> <p>14 beginning of the negotiations until the</p> <p>15 signing of the agreement?</p> <p>16 A It's varied by the customer in terms of --</p> <p>17 in the particular agreement, and there's</p> <p>18 sometimes been a number of issues. I</p> <p>19 believe the shortest is probably in the</p> <p>20 four to six week time frame, not</p> <p>21 full-time, but, you know, to work through,</p> <p>22 and the longest has been in the 12 to 18</p> <p>23 month time frame, again not full-time but</p> <p>24 just as we worked through the</p> <p>25 negotiations.</p>	<p style="text-align: right;">Page 120</p> <p>1 they've been identified in this</p> <p>2 interconnection agreement, or -- and</p> <p>3 others are available via special</p> <p>4 construction through the FCC tariff. To</p> <p>5 the degree they want something additional</p> <p>6 to that, then we would not perform those</p> <p>7 additional services until we had an</p> <p>8 agreement in place to do that.</p> <p>9 Q Do you know which FCC tariff they could</p> <p>10 order out of?</p> <p>11 A Process construction processes as</p> <p>12 identified in FCC Tariff No. 2.</p> <p>13 Q This tariff?</p> <p>14 A Yes, that large one.</p> <p>15 MS JOYCE: Let's take a</p> <p>16 ten-minute break.</p> <p>17 (RECESS)</p> <p>18 BY MS JOYCE:</p> <p>19 Q We're back on the record. Mr. Fogle, do</p> <p>20 you have a position on what</p> <p>21 indemnification should be provided to</p> <p>22 BellSouth if two CLPs split a line within</p> <p>23 the BellSouth network?</p> <p>24 A The position that I have and BellSouth has</p> <p>25 is simply that since we're not a party to</p>
<p style="text-align: right;">Page 119</p> <p>1 Q So was it as long as a year in some</p> <p>2 instances?</p> <p>3 A Year, year-and-a-half, yes. Sometimes the</p> <p>4 other companies have extenuating</p> <p>5 circumstances that require them not to be</p> <p>6 able to negotiate for a while, so that</p> <p>7 causes time to pass.</p> <p>8 Q Did BellSouth perform any other requested</p> <p>9 work for these entities prior to the</p> <p>10 signing of the agreement?</p> <p>11 A No.</p> <p>12 Q Is it your understanding that BellSouth</p> <p>13 would not perform any bridge tap removal</p> <p>14 not covered in your bullets one, two,</p> <p>15 three prior to the signing of such an</p> <p>16 agreement?</p> <p>17 MR. CULPEPPER: Object to the form</p> <p>18 of the question. What agreement are we</p> <p>19 talking about?</p> <p>20 MS. JOYCE: The separate agreement</p> <p>21 that he's proposed would have to be done</p> <p>22 A If a CLP wants a service to be performed</p> <p>23 prior to a separate agreement is</p> <p>24 available, they have options. Either some</p> <p>25 services can be performed as a result</p>	<p style="text-align: right;">Page 121</p> <p>1 those third-party agreements between a CLP</p> <p>2 and whoever else they're choosing to split</p> <p>3 a line with, we'd like to not -- we'd like</p> <p>4 to be indemnified for whatever those</p> <p>5 agreements are from any potential</p> <p>6 liabilities that would result in them. We</p> <p>7 don't have an opportunity to represent</p> <p>8 BellSouth's interests in those agreements,</p> <p>9 so we'd like to be indemnified from them.</p> <p>10 Q And you'd like the Joint Petitioners to</p> <p>11 indemnify BellSouth?</p> <p>12 A Yes.</p> <p>13 Q Would you please turn to page 14 of your</p> <p>14 testimony? And at lines 14 to 16, you</p> <p>15 state that BellSouth is just simply</p> <p>16 requesting that its limitation of</p> <p>17 liabilities extend to third parties that</p> <p>18 the Joint Petitioners may enter into</p> <p>19 agreement within the process of</p> <p>20 establishing line splitting service. On</p> <p>21 line 15, should that be with in two</p> <p>22 separate words? Just to clarify further</p> <p>23 what your meaning is.</p> <p>24 A Yes.</p> <p>25 Q Okay. It's your position that -- or</p>

<p style="text-align: right;">Page 122</p> <p>1 understanding that Joint Petitioners are. 2 at this time, unwilling to indemnify 3 BellSouth entirely? 4 A That's my understanding, yes 5 Q Sitting here today, what is the level of 6 indemnification that you think is 7 appropriate when two CLP lines split in 8 your network? 9 A The level of indemnification between the 10 CLPs or to BellSouth or -- 11 Q To BellSouth 12 A We're simply looking for the level of 13 indemnification that we have with 14 these -- with the CLPs that we negotiate 15 with not be extended to the -- whoever 16 they're negotiating with I mean, we're 17 not looking for additional -- we do not 18 expect to assume or incur additional 19 liability as a result of independent 20 agreements that CLPs reach amongst 21 themselves that we're not a party to We 22 just simply can't accept additional 23 liability as a result of that 24 Q Would you, for example, think it 25 appropriate that BellSouth be indemnified</p>	<p style="text-align: right;">Page 124</p> <p>1 A I believe the Commission could put an 2 order in that would require us to violate 3 our tariffs I don't know whether or not 4 our tariffs carry the weight of law or 5 not I believe they are agreed to by the 6 FCC 7 Q Do you know whether a failure to comport 8 with a tariff provision is a violation of 9 the law? 10 A I believe that it is 11 Q Does BellSouth write its tariffs? 12 A Yes, we do 13 Q From time to time, does BellSouth amend 14 its tariffs? 15 A Yes, we do 16 Q Has BellSouth ever amended its federal 17 tariff regarding DSL -- 18 A Yes 19 Q -- transport services? 20 A Yes, we have 21 Q Would BellSouth be unwilling to amend its 22 federal DSL tariff in order to comply with 23 an order of the North Carolina Utilities 24 Commission? 25 MR CULPEPPER Object to the form</p>
<p style="text-align: right;">Page 123</p> <p>1 for damages that arise out of one of those 2 CLP actions as they perform line 3 splitting? 4 A Yes 5 Q And are you familiar with the term 6 proximate cause? 7 A No, I'm not 8 Q Could you please turn to page 15 of your 9 testimony? And you state at lines 12 to 10 17 essentially that the North Carolina 11 Utilities Commission entered an order that 12 required BellSouth to, quote, alter 13 certain practices concerning its 14 FastAccess internet service It would 15 effectively be ordering BellSouth to 16 violate or alter the express terms of 17 BellSouth's federal tariff Do you see 18 that? 19 A Yes, I do 20 Q Well, is your position then that it is 21 possible the Commission would enter an 22 order that would require BellSouth to 23 violate the law? 24 MR CULPEPPER Object to the form 25 of the question</p>	<p style="text-align: right;">Page 125</p> <p>1 of the question 2 A I'm not sure Can you rephrase that 3 question for me? 4 Q I'll state it in another version that 5 might make more sense 6 A That would be fine 7 Q Would BellSouth amend its tariff in order 8 to comport with an order of the state 9 commission? 10 A No, not a federal tariff 11 Q And why would that be the case? 12 A It's a matter of jurisdiction And state 13 rules and state orders are altered 14 best -- like you say, to comport with 15 those rules is done through state tariffs 16 and state-based interconnection agreements 17 and other types of documents and rules and 18 orders and laws and tariffs that are filed 19 within those jurisdictions It simply 20 wouldn't make sense for us to allow states 21 to make orders that require us to change 22 our federal tariffs The main reason 23 behind that is that our federal tariff 24 governs our actions in all nine states 25 that we do business in And we change our</p>

<p style="text-align: right;">Page 126</p> <p>1 federal tariff, it affects multiple 2 states' outcome, not just the particular 3 state that has given us this order 4 Q Is it ever the case that your federal 5 tariff has provisions specific to 6 individual states? 7 A I believe it probably does in various 8 places. There are some cases -- I know 9 with pricing particularly, they specify 10 particular marketplaces where we have 11 what's called pricing flexibility. Those 12 don't exist in all locations, all states. 13 So I believe there are state-specific 14 rules in some of our federal tariffs. 15 Q And you've testified earlier that certain 16 commissions have ordered BellSouth to 17 continue to provide DSL over a loop that 18 is in use by a CLP. Do you recall that? 19 A That is correct. 20 Q And do you know whether -- strike that. 21 Do you know how BellSouth came 22 into compliance with those orders? 23 A Yes, I do. 24 Q And how did it come into compliance? 25 A In Florida, we were ordered to provide our</p>	<p style="text-align: right;">Page 128</p> <p>1 action against us since we are complying 2 with the state's order. We've also filed 3 for emergency petition for relief with the 4 FCC to specifically address the 5 jurisdictional issues and the overlapping 6 issues between the state and the federal 7 rules. 8 Q To your knowledge, have any BellSouth 9 personnel been in communication with the 10 FCC regarding the possibility that 11 BellSouth is out of compliance with its 12 federal tariff as regards to the states of 13 Georgia and Louisiana? 14 A I don't know. 15 Q To your knowledge, has BellSouth ever 16 provided DSL service on a retail basis 17 over a UNE loop or a UNE-P facility in 18 North Carolina? 19 A I believe approximately three or four 20 years ago, there was an ordering mistake 21 or an edit that was missing in some of our 22 ordering systems that allowed for the 23 accidental provisioning of DSL service on 24 at the time only a handful, a few hundred 25 circuits region wide, of which I would</p>
<p style="text-align: right;">Page 127</p> <p>1 DSL service on a separate facility. So we 2 developed a process to do that. The 3 separate facility is purchased or put in 4 place by BellSouth and does not violate 5 our federal tariff. In Georgia and 6 Louisiana -- well, I'll move -- actually, 7 Kentucky is easier. You want to talk 8 about next. 9 In Kentucky, we're doing our DSL 10 service -- or we maintain our DSL service 11 over a resold line. A resold line is, by 12 definition, a telephone company provided 13 exchange line facility. So, again, we're 14 not in violation of our federal tariff. 15 In Louisiana and Georgia, we were 16 required to put our DSL service on the 17 UNE-P facility, same UNE-P facility that 18 the CLEC is using. That does violate our 19 federal tariff. 20 Q What, if anything, did BellSouth do to 21 address the fact that Georgia and 22 Louisiana had entered an order that would 23 cause it to violate its federal tariff? 24 A We are hoping that the FCC doesn't 25 determine or decide to do an enforcement</p>	<p style="text-align: right;">Page 129</p> <p>1 assume some of them were North Carolina. 2 Q Do you know how many circuits were 3 involved? 4 A I think it -- it's -- maximum amount, 5 approximately 700. 6 Q Is it your position that because of that 7 accidental provisioning that you 8 described, BellSouth was out of compliance 9 with its federal tariff? 10 A Yes, we were. 11 Q Were any penalties imposed by the FCC as a 12 result of that situation? 13 A No, there were not. 14 Q What, if anything, did BellSouth do to 15 remedy the situation? 16 A We -- Our first approach -- well, took 17 actually a three pronged approach. Our 18 focus was to be as disruptive -- to 19 provide as little disruption as possible 20 to the end user customers. So our first 21 approach was we talked with the CLECs 22 whose facilities we were using without 23 their permission. We identified the 24 individual end user customers that had 25 identified the lines that we had our DSL</p>

<p style="text-align: right;">Page 130</p> <p>1 service on their UNE-Ps. We gave them the 2 option at that time to convert into resold 3 lines. Several of the CLECs did convert 4 to resold lines. Some of them chose not 5 to.</p> <p>6 At that point, we -- for those 7 individual end user customers that the 8 CLECs had chose not to convert to resold 9 lines, we then contacted the internet 10 service providers of those end users and 11 let them know that we would no longer be 12 able to provide DSL service. And then 13 once a particular time had gone by, we 14 then disconnected those end users from 15 their DSL service since they were 16 currently being provisioned over a UNE-P 17 line.</p> <p>18 Q Did those customers retain their voice 19 service?</p> <p>20 A I don't know exactly what -- because the 21 outcome of the various voice service 22 choices that they made, our interest was 23 entirely -- was in complying with our FCC 24 tariff and also to no longer be using the 25 CLEC UNE facilities that we did not have</p>	<p style="text-align: right;">Page 132</p> <p>1 proven to be smaller and we believe it's 2 been smaller than the actual cost it would 3 take to be able to facilitate and provide 4 our DSL service over a CLEC's UNE. So 5 we've chosen not to go forward with that.</p> <p>6 Q So cost was one factor in that 7 determination, is your understanding?</p> <p>8 A Yes.</p> <p>9 Q At page 20 of your testimony, lines 1 and 10 2, which continue over from line -- page 11 19, you state that BellSouth would have to 12 negotiate rates, terms, and conditions for 13 providing -- provisioning this service 14 with each CLP. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Do you know whether those negotiations 17 took place with a CLP?</p> <p>18 A In the states we've been ordered to 19 provide our DSL service, we developed 20 some -- a negotiating -- the language 21 that would go into the interconnection 22 agreement that allowed us access to the 23 high-frequency portion of the loop. That 24 involved time on our part to negotiate 25 with the two to three CLECs, required to</p>
<p style="text-align: right;">Page 131</p> <p>1 permission to use.</p> <p>2 Q Did you ever ask permission to use those 3 facilities?</p> <p>4 A No, we did not.</p> <p>5 Q Did any CLEC invite you to use its 6 facilities to provide DSL over a loop it 7 was using to provide voice service?</p> <p>8 A I don't recall if we were invited at that 9 time to use those facilities.</p> <p>10 Q Are you familiar with the monthly 11 recurring rates that a CLP pays to access 12 a resold line?</p> <p>13 A I've got limited familiarity with it.</p> <p>14 Q To your knowledge, is it more or less than 15 what a CLP pays for a UNE line?</p> <p>16 A I believe that it is generally more.</p> <p>17 Q Is it more or less than what a CLP pays 18 for a UNE-P facility?</p> <p>19 A I believe it's more, but I'm not certain 20 on that.</p> <p>21 Q Was there ever a time that BellSouth 22 considered doing DSL over a UNE line?</p> <p>23 A We've considered it a couple of different 24 times over the last several years. It has 25 always -- The market opportunity has</p>	<p style="text-align: right;">Page 133</p> <p>1 negotiate -- and I know at least one of 2 they went to an arbitration over the 3 language that we then had to defend in an 4 arbitration. So we've done it in those 5 states where we've been required to 6 continue to provide our DSL service.</p> <p>7 Q Were the negotiations conducted between 8 BellSouth and a group of CLPs together?</p> <p>9 A No, individual CLECs or CLPs.</p> <p>10 Q Did BellSouth ever conduct these 11 negotiations in states in which it had not 12 been ordered to provide DSL over a UNE?</p> <p>13 A No, we have not.</p> <p>14 Q Did a CLEC in one of those states ever 15 request negotiations for that purpose?</p> <p>16 A I wouldn't know.</p> <p>17 Q Do you know whether the North Carolina 18 Utilities Commission has reviewed the 19 issue of whether BellSouth should provide 20 DSL over a UNE line?</p> <p>21 A Yes, I believe the North Carolina 22 Utilities Commission has reviewed it.</p> <p>23 Q And what is your understanding of their 24 position or ruling on that issue?</p> <p>25 A In our 271 proceedings, our 271 case, this</p>

<p style="text-align: right;">Page 134</p> <p>1 issue came up repeatedly and included 2 North Carolina. And at that time, the 3 commission quoted the Georgia/Louisiana 4 FCC order that stated specifically -- 5 which stated specifically that the 6 incumbent CLEC has no obligation to 7 provide DSL service over the competitive 8 CLEC lease facilities 9 Q Are you aware there is arbitration taking 10 place between ATC, Deltacom, and BellSouth 11 in North Carolina? 12 A Yes 13 Q Do you know whether this issue is 14 contained in that arbitration? 15 A I believe that it is 16 Q Do you know why the North Carolina 17 Commission is reviewing this issue again? 18 A I do not 19 Q If in North Carolina the Joint Petitioners 20 gave BellSouth permission to use their -- 21 these lines, their UNE lines to provide 22 DSL service on a retail basis, do you know 23 whether BellSouth would do so? 24 A Not -- We would not do so unless ordered 25 by the Commission</p>	<p style="text-align: right;">Page 136</p> <p>1 the exact date 2 Q And what did the petition ask for? 3 A Specifically it asked the FCC to address 4 and declare once and for all whether we 5 are or are not required to provide our DSL 6 service over a UNE-P so that we would not 7 have to litigate this issue over and over 8 again in a number of different states, in 9 a number of different arbitrations, and 10 then have to deal with the subsequent 11 appeals, so that's the reason for the 12 emergency relief 13 Q And when you state at lines 20 to 22 that 14 in response to this emergency petition, 15 all current proceedings are being held in 16 abeyance, awaiting the outcome of the 17 FCC's determination on this issue, which 18 current proceedings are you referring to? 19 A I'm referring to the appeals. BellSouth 20 has appealed the various orders in the 21 four states that are associated with DSL 22 with UNEs. And those appeals have all 23 been -- are being -- awaiting the 24 outcome of the FCC's determination on this 25 issue for directive</p>
<p style="text-align: right;">Page 135</p> <p>1 Q And if you could please turn again to your 2 testimony at page 20 -- excuse me, page 3 21, line 1. You use the term the 4 Commission's consultative opinion to the 5 FCC. What type of opinion are you 6 referring to in that line? 7 A This is an opinion that they entered in 8 support of our 271 application 9 Q And it's your understanding that that is 10 called a consultative opinion? 11 A That's my understanding, yes 12 Q Did you participate in the 271 proceeding 13 in North Carolina? 14 A I believe I filed written testimony. I 15 don't believe I actually appeared in front 16 of the Commission 17 Q You appeared in front of -- 18 A I do not believe I appeared in front of 19 the Commission, but I do believe I 20 provided written testimony 21 Q At page 22 at line 17 to 22, you discuss 22 an emergency petition with the FCC. When 23 was that petition filed, to your 24 knowledge? 25 A I want to say last fall. I don't remember</p>	<p style="text-align: right;">Page 137</p> <p>1 Q So these appeals were filed in Georgia, 2 Louisiana, Kentucky, and Florida? 3 A In the appropriate appellate jurisdictions 4 for those, yes 5 Q And did you participate in the briefs that 6 were written in those appeals? 7 A I think I helped develop some of the 8 factual bases for those briefs 9 Q And when were those briefs filed? 10 A My recollection is at various times 11 through last year, from early in the year 12 through the end of the year. I don't know 13 exactly when each of them individually 14 were filed 15 Q Do you know when the initial request to 16 appeal the orders were filed? 17 A I do not. I know we put -- we did our 18 request to appeal within the proper time 19 frames that we were -- the proper windows 20 we were allowed to appeal, but I don't 21 remember exactly when those dates were 22 Q If a state commission were to order 23 BellSouth to perform a task -- 24 A Uh-huh 25 Q -- would BellSouth endeavor to perform</p>

<p style="text-align: right;">Page 138</p> <p>1 that task?</p> <p>2 A Yes</p> <p>3 Q Is there any reason that some further</p> <p>4 consent must be acquired from BellSouth</p> <p>5 prior to its complying with the order?</p> <p>6 A I'm not sure of that question I'm not</p> <p>7 sure what you're referring to</p> <p>8 Q Well, I guess to be more clear -- this</p> <p>9 might speed things along</p> <p>10 A Uh-huh</p> <p>11 Q If you'd look at Attachment 2, which is</p> <p>12 marked as Exhibit 3</p> <p>13 A Okay</p> <p>14 Q Page 44 Section 3 10 4 This is a</p> <p>15 section that regards the issue that we're</p> <p>16 talking about</p> <p>17 A Yes</p> <p>18 Q And BellSouth's proposed language begins</p> <p>19 with a clause, to the extent required by</p> <p>20 applicable law Do you see that?</p> <p>21 A Yes</p> <p>22 Q Do you know what that refers to?</p> <p>23 A I think we're discussing the fact that</p> <p>24 there are potentially an applicable law</p> <p>25 that requires us to do the following</p>	<p style="text-align: right;">Page 140</p> <p>1 wholesale DSL service, as we call it</p> <p>2 internally But it's essentially the</p> <p>3 federally tariffed DSL service that's</p> <p>4 available to internet service providers</p> <p>5 Q Is that service provided to CLPs on a</p> <p>6 wholesale basis?</p> <p>7 A It's provided to CLPs under the same terms</p> <p>8 and conditions that it's provided to</p> <p>9 anybody else subject to the federal</p> <p>10 tariff, so</p> <p>11 Q Who is anybody else?</p> <p>12 A Anybody who meets the terms and conditions</p> <p>13 of -- of -- to have the ability to</p> <p>14 purchase services out of our federal</p> <p>15 tariff, we're required to provide services</p> <p>16 to them, whether they be a CLP, an</p> <p>17 interexchange carrier, an ISP, an end</p> <p>18 user We can't discriminate who buys at</p> <p>19 the federal tariff level, so we have --</p> <p>20 all the above buy DSL services out of our</p> <p>21 federal tariff to use</p> <p>22 Q So is it your understanding then that the</p> <p>23 DSL service is provided under the same</p> <p>24 terms and conditions to a CLP as to a</p> <p>25 retail end user?</p>
<p style="text-align: right;">Page 139</p> <p>1 Q Where is that applicable law found?</p> <p>2 A In North Carolina, I don't believe there</p> <p>3 is an applicable law that requires us to</p> <p>4 provide our DSL service for FastAccess</p> <p>5 Q So would it -- is it fair to say that</p> <p>6 applicable law, in your understanding,</p> <p>7 would be the orders from Georgia and</p> <p>8 Louisiana? Would those be a repository of</p> <p>9 applicable law for this section?</p> <p>10 A The only requirement that I'm aware of</p> <p>11 that -- legal requirement that we have</p> <p>12 had to -- or forced to -- or required to</p> <p>13 provide our DSL service, our FastAccess</p> <p>14 service to CLPs and users has been in</p> <p>15 Louisiana, Georgia, Florida, and Kentucky</p> <p>16 Q So would those orders comprise the</p> <p>17 applicable law?</p> <p>18 A As it is today, yes</p> <p>19 Q And then this section goes on to say that</p> <p>20 BellSouth shall provide its DSL service</p> <p>21 and FastAccess services Are those two</p> <p>22 distinct services?</p> <p>23 A Yes, they were</p> <p>24 Q What is DSL service?</p> <p>25 A DSL service is a term we use for the</p>	<p style="text-align: right;">Page 141</p> <p>1 A To the degree a retail end user wants to</p> <p>2 buy DSL services out of a federal tariff,</p> <p>3 they can do that It's not very common</p> <p>4 It does happen But ISPs, internet</p> <p>5 service providers, as well as CLPs all buy</p> <p>6 out of the same tariff at the same terms</p> <p>7 and conditions</p> <p>8 Q Do you know the rates associated with the</p> <p>9 DSL service referenced in this?</p> <p>10 A It depends on which DSL service you're</p> <p>11 talking about, different rates for</p> <p>12 different services</p> <p>13 Q And those are all in the tariff?</p> <p>14 A They're all specified in the tariff, that</p> <p>15 is correct</p> <p>16 Q What is FastAccess service?</p> <p>17 A FastAccess service is a retail internet</p> <p>18 access service It's an information</p> <p>19 service that's provided by BellSouth to</p> <p>20 retail end users, both consumers and small</p> <p>21 businesses and large businesses It</p> <p>22 combines information in e-mail and all the</p> <p>23 internet protocol activity and support and</p> <p>24 help desk and uses the tariff or DSL</p> <p>25 transport service It's tariffed with the</p>

<p style="text-align: right;">Page 142</p> <p>1 FCC as one of its inputs to create an 2 information service that is sold to the 3 end user. FastAccess is referred to kind 4 of collectively as that group of services 5 that are sold by retail to those end 6 users. 7 Q So is it your understanding that DSL 8 service is, as the FCC uses the term, a 9 telecommunication service? 10 A Yes, that's my understanding. 11 Q Would it be fair to say then that 12 FastAccess takes that telecommunication 13 service and adds what the FCC terms 14 information services? 15 A Yes. 16 Q Are the rates different for DSL service 17 and FastAccess service? 18 A Yes. 19 Q And they're all tariffed? 20 A No. DSL services are tariffed. 21 FastAccess services are not tariffed. 22 Q And why not? 23 A Because their information service. By 24 definition, there's no tariff requirement 25 because it's a competitive marketplace.</p>	<p style="text-align: right;">Page 144</p> <p>1 terms, and conditions. What would be 2 examples of rates, terms, and conditions 3 that would need to be separately 4 negotiated? 5 A To a degree, we're ordered to -- again, it 6 comes back to the applicable law and 7 what's ordered. We simply don't know what 8 the North Carolina Utilities Commission is 9 going to order. But if they were to order 10 us to continue to provide our FastAccess 11 service or some aspect of our FastAccess 12 service, which is non-regulated, our 13 prices and rates and terms and conditions 14 of that are all subject to commercial 15 agreements. To the degree we would offer 16 those to the CLEC or the CLP, we'd have to 17 negotiate that. 18 Q If a CLP wanted to obtain DSL service -- 19 wholesale service, are there rates that 20 would apply other than what's in your 21 federal tariff? 22 A No. 23 Q Do you know what kinds of terms and 24 conditions are included in your federal 25 tariff for the wholesale DSL service?</p>
<p style="text-align: right;">Page 143</p> <p>1 Q And then referring back to this 2 provision. It goes on to say that these 3 services we were discussing will be 4 provided to a customer for use with UNE-P 5 as loops. Do you have an understanding as 6 to what that clause means? 7 A I would venture to say that that's not the 8 best written paragraph. I believe the 9 issue there is that the different orders 10 that we have right now between Georgia, 11 Louisiana, Kentucky, and Florida all have 12 different requirements as to how we must 13 continue to provide our DSL services or 14 our FastAccess. And some impact UNE-P, 15 some impact UNE loops. I think they're 16 simply trying to incorporate the language 17 so that depending on what the applicable 18 law is, we will comply. 19 Q Could this clause mean that these services 20 will be provided over UNE-P as if the 21 UNE-P were a UNE loop? 22 A I don't read it as that way. 23 Q And then this section goes on to say that 24 BellSouth will provide those two services 25 pursuant to separately negotiated rates,</p>	<p style="text-align: right;">Page 145</p> <p>1 A Well, we have ordering terms and billing 2 terms, provisioning terms, those types of 3 things. We have expectations that our 4 customers pay us for those services they 5 order, that types of thing. Those are 6 covered in the tariff. 7 Q Are there liability terms in the tariff -- 8 in the DSL wholesale tariff? 9 A Liability terms in terms of expressing 10 liability between BellSouth and their 11 customers? 12 Q As between BellSouth and the CLP that's 13 purchasing the DSL wholesale service. 14 A I assume somewhere in the federal tariff 15 there's a discussion of liability. I 16 don't know exactly where it would be. 17 Q So sitting here, as you read this 18 language, can you think of any rates, 19 terms, and conditions that would not be in 20 the tariff that would govern when a CLP 21 purchases DSL wholesale service from 22 BellSouth? 23 A All DSL wholesale services are tariffed, 24 so those tariff rules would apply. Our 25 tariff rates would apply.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q Now, you stated that in Georgia and 2 Louisiana, BellSouth took the steps of 3 establishing agreements with CLPs in order 4 to comply with the orders of the Georgia 5 and Louisiana commissions. Is that 6 correct? 7 A That's correct 8 Q And do those agreements include terms and 9 conditions that discuss how -- what the 10 product is called for purposes of placing 11 an order? 12 A The terms and conditions that are in the 13 interconnection agreement all have to do 14 with access and meeting our obligation as 15 required by law. One of the requirements 16 is that we have access to the 17 high-frequency portion of the loop, so we 18 acquire in the interconnection agreement 19 that the CLEC or CLP give us access to the 20 high-frequency portion of the loop at no 21 charge 22 Q And those terms and conditions are 23 included in the interconnection agreement? 24 A They are included in the interconnection 25 agreements in Georgia and Louisiana and</p>	<p style="text-align: right;">Page 148</p> <p>1 done in Georgia and Louisiana and 2 Kentucky. So the process for implementing 3 and complying with the order is 4 different 5 In Florida, we do -- we provide 6 our DSL service -- actually, sorry. In 7 Florida, we were specifically ordered to 8 continue to provide our FastAccess 9 service, so we provide that over a 10 separate facility. We actually provision 11 a new loop to the home to provide that 12 service 13 In Georgia and Louisiana, we're 14 ordered to provide it on the same 15 facility, so we facilitate paths on the 16 same facility 17 In Kentucky, we do it over a 18 resold line and then reprice on a monthly 19 basis the price of that resold line to be 20 equivalent to a UNE-P 21 So in each case, the process that 22 we have to go through and the coordination 23 we have to go through with the CLEC is 24 different in -- as a result of the orders 25 that we have received</p>
<p style="text-align: right;">Page 147</p> <p>1 Florida. I don't know if they are in 2 Kentucky 3 Q And do those agreements have terms and 4 conditions for how a CLP would order and 5 obtain the service that you've been 6 ordered to provide? 7 A In this case, the orders are not for the 8 CLP to order the DSL service or the 9 FastAccess service. It's for BellSouth to 10 continue to provide its DSL service or 11 FastAccess service to an end user. So the 12 CLP itself is not ordering that service. 13 So there's no terms or conditions about 14 how they would order the DSL or FastAccess 15 service in the interconnection agreement 16 Q Are the methods and procedures by which 17 BellSouth would provide DSL service to an 18 end user under those circumstances 19 different from state to state in the 20 BellSouth region? 21 A Yes 22 Q And in what respects are they different? 23 A The rules or the orders that we have been 24 ordered -- what we've been ordered to do 25 in Florida is different than what has been</p>	<p style="text-align: right;">Page 149</p> <p>1 Q But as a matter of what BellSouth is able 2 to perform, regardless of what it's 3 ordered to do, when a CLEC customer wants 4 BellSouth DSL, would the means by which 5 BellSouth provides DSL to that customer 6 when that customer is a CLP voice 7 customer -- 8 A Uh-huh 9 Q -- be different in one state as opposed to 10 another? 11 A Yes. I mean, the means we provide it in 12 Florida is over a separate line. In 13 Georgia and Louisiana, it's all the same 14 facility as the UNE-P. In Kentucky, we 15 provide it over a resold line 16 Q Is it technically feasible for BellSouth 17 to provide DSL over a UNE-P in each of its 18 states? 19 A Yes 20 Q Is it technically feasible for BellSouth 21 to provide DSL FastAccess over a separate 22 loop in each of its states? 23 A Yes 24 Q The agreements that were signed in Georgia 25 and Louisiana with the CLPs, are they</p>

<p style="text-align: right;">Page 150</p> <p>1 state specific?"</p> <p>2 A Yes, they are</p> <p>3 Q Does BellSouth use the same OSS ordering</p> <p>4 systems in each of its states?</p> <p>5 A I believe, yes, we do</p> <p>6 Q Do you know whether BellSouth has</p> <p>7 any 251 -- Section 251 interconnection</p> <p>8 agreements that include provisions that</p> <p>9 discuss whether CLP customers may obtain</p> <p>10 FastAccess?</p> <p>11 A I believe that language has been</p> <p>12 incorporated into interconnection</p> <p>13 agreements in Florida, Louisiana, and</p> <p>14 Georgia. I don't know what's been done in</p> <p>15 Kentucky, but all of those are under</p> <p>16 appeal by BellSouth</p> <p>17 Q These were not region-wide Section 251</p> <p>18 agreements?</p> <p>19 A No</p> <p>20 Q Has BellSouth ever considered implementing</p> <p>21 what it has been ordered to do in Georgia</p> <p>22 in any of its other states?</p> <p>23 A We have considered what -- over a UNE-P is</p> <p>24 in the general sense from product</p> <p>25 prospective, which is very similar to what</p>	<p style="text-align: right;">Page 152</p> <p>1 of the question. It's been asked and</p> <p>2 answered, for one thing</p> <p>3 MS JOYCE His question</p> <p>4 wasn't -- His response wasn't</p> <p>5 responsive. He said what they are ordered</p> <p>6 to do, and I just simply asked -- maybe I</p> <p>7 could be more clear</p> <p>8 Q Would the Georgia Commission preclude</p> <p>9 BellSouth from serving a CLP end user</p> <p>10 customer over a stand-alone loop for DSL</p> <p>11 service?</p> <p>12 A I don't recall if they specifically</p> <p>13 excluded that</p> <p>14 Q Do you know whether the -- some or all of</p> <p>15 the CLPs with whom you signed agreements</p> <p>16 in Georgia and Louisiana to implement</p> <p>17 those state orders are present in the</p> <p>18 other BellSouth states?</p> <p>19 A Many of them have the -- presence in</p> <p>20 multiple states</p> <p>21 Q And, to your knowledge, did any of those</p> <p>22 CLPs request that BellSouth implement that</p> <p>23 agreement in any other BellSouth state?</p> <p>24 A I don't know one way or the other if it's</p> <p>25 been requested</p>
<p style="text-align: right;">Page 151</p> <p>1 was ordered in Georgia, and projected that</p> <p>2 from a region-wide perspective. If we</p> <p>3 were to actually provide the Georgia</p> <p>4 solution in Florida, we would be in</p> <p>5 violation of the Florida law as well as</p> <p>6 the Kentucky law. So we don't really have</p> <p>7 the leeway of applying it everywhere</p> <p>8 because the rules that we were ordered to</p> <p>9 do are sufficiently different that one</p> <p>10 does not necessarily comply with the</p> <p>11 other</p> <p>12 Q Did the Florida Commission order BellSouth</p> <p>13 not to provide DSL over a new line?</p> <p>14 A No, they did not</p> <p>15 Q Did the Georgia Commission order BellSouth</p> <p>16 not to provide FastAccess service over a</p> <p>17 stand-alone loop?</p> <p>18 A I don't remember the exact wording of the</p> <p>19 language, but I don't believe we were</p> <p>20 given -- we were -- I believe we were</p> <p>21 required to provision our FastAccess</p> <p>22 service over the same facility</p> <p>23 Q But were you ordered not to provide</p> <p>24 FastAccess over a stand-alone loop?</p> <p>25 MR. CULPEPPER Object to the form</p>	<p style="text-align: right;">Page 153</p> <p>1 Q Did you participate in the negotiations by</p> <p>2 which those agreements were reached?</p> <p>3 A I participated in negotiations with FDN in</p> <p>4 Florida. I supported the negotiators in</p> <p>5 the Louisiana and the Georgia</p> <p>6 negotiations, but did not directly</p> <p>7 participate</p> <p>8 Q And do you have an understanding, for</p> <p>9 example, for the FDN negotiation, what was</p> <p>10 the length of time that elapsed between</p> <p>11 the beginning of the negotiations and the</p> <p>12 signing of the agreement?</p> <p>13 A I think that particular agreement was</p> <p>14 negotiated in approximately two to three</p> <p>15 weeks</p> <p>16 Q And do you have any understanding of the</p> <p>17 time frame that elapsed in Georgia?</p> <p>18 A I do not know</p> <p>19 Q Do you know how long it took for those</p> <p>20 agreements to be negotiated in Louisiana?</p> <p>21 A I do not know</p> <p>22 MS JOYCE All right. I think we</p> <p>23 can break for lunch. Go off the record</p> <p>24 (LUNCH RECESS)</p> <p>25 BY MS JOYCE</p>

<p style="text-align: right;">Page 154</p> <p>1 Q Hello, Mr. Fogle. You understand you're 2 still under oath? 3 A Yes, I do. 4 Q All right. Now, I'd like to discuss with 5 you the issue of what should the 6 definition of cross connect be in the 7 agreement that's at issue in this case. 8 Did you participate in the calls 9 that negotiated this particular issue 10 between the Joint Petitioners and 11 BellSouth? 12 A No, I did not. 13 Q And did you consult with anybody at 14 BellSouth who did participate in those 15 calls? 16 A Yes, I did. 17 Q And who were those persons? 18 A Lynn Brewer, B-r-e-w-e-r. 19 Q And is she an attorney? 20 A No, she's not. 21 Q And did you discuss things with her 22 verbally? 23 A Yes. 24 Q And did you provide her with anything 25 written regarding the position or issue</p>	<p style="text-align: right;">Page 156</p> <p>1 cross connect in any FCC order? 2 A No, I do not. 3 (DEPOSITION EXHIBIT NO. 9 WAS MARKED) 4 Q I'm going to hand you a document marked 5 Exhibit 9. Again, it's voluminous. 6 Again, I believe I just have two copies of 7 that. And do you recognize this document? 8 A It appears to be Attachment 4, Collocation 9 from interconnection agreement. 10 Q And would you accept that this is the 11 attachment that's being negotiated in this 12 case? 13 A Yes, I will. 14 Q And see that it indicates on the front 15 5-23-04 draft. Do you understand that 16 that means that this is a draft that was 17 in place between the parties as of May 18 23rd, 2004? 19 A That would be my understanding, yes. 20 Q Will you please turn to page -- what is 21 numbered on the top as page 11. And do 22 you see there Section 3.9. And there's a 23 section that is designated for customer 24 version of language? 25 A Yes, I do.</p>
<p style="text-align: right;">Page 155</p> <p>1 4-1? 2 A I did not, no. 3 Q And on what understanding, what basis did 4 you write your testimony for Issue 4-1? 5 A Developed this issue based on 6 conversations with Lynn Brewer. 7 Q Turn, please, to page 24 of your 8 testimony. Beginning at line 5, you 9 define a cross connect as a jumper on a 10 frame (main distribution frame or 11 intermediate distribution frame) or panel 12 (digital service cross connect (DSX) or 13 light guide cross connect -- cross 14 connect (LGX) that is used to connect 15 equipment and/or facility terminations 16 together. Did you derive that definition? 17 A No, I did not. 18 Q And do you know whether that definition is 19 the same as the definition the FCC may 20 have provided for a cross connect? 21 A I don't know. 22 Q Have you reviewed the FCC's rules 23 regarding what is a cross connect? 24 A I have reviewed some of them. 25 Q Do you recall reviewing the definition of</p>	<p style="text-align: right;">Page 157</p> <p>1 Q It states that a cross connection (cross 2 connect) is a cabling scheme between 3 cabling runs, subsystems, and equipment 4 using patch cords or jumper wires that 5 attach to connection hardware on each end, 6 as described and defined by the FCC. Do 7 you see that? 8 A Yes, I do. 9 Q Do you believe that definition is an 10 appropriate definition for a cross 11 connect? 12 A For just a cross connect as a broad 13 definition, yeah, that's an appropriate 14 definition. 15 (DEPOSITION EXHIBIT NO. 10 WAS MARKED) 16 Q I'm handing you an exhibit that's been 17 marked Exhibit 10. 18 MR. CULPEPPER: Thanks. 19 Q Have you ever seen this document before? 20 A No, I don't believe I have. 21 Q Do you see the front page indicates this 22 is an order from the Federal 23 Communications Commission? 24 A Yes, I do. 25 Q And it was released August 8th, 2001, in a</p>

<p style="text-align: right;">Page 158</p> <p>1 docket entitled deployment of wireline 2 services offering advanced 3 telecommunications capability. Did you 4 participate in the FCC rule making that 5 resulted in this order? 6 A No, I did not 7 Q Can you please turn to the second page of 8 this exhibit and look at paragraph 58 9 And there's some quoted language in that 10 paragraph 11 A Yes, I see that 12 Q Please compare that quoted language in 13 this FCC order portion thereof and the 14 language that appears in bold type on 15 Exhibit 9 at Section 3.9 16 MR CULPEPPER We are looking at 17 paragraph 58, right? 18 MS JOYCE That's right 19 MR CULPEPPER All right 20 A They appear to match pretty closely 21 Q Can you explain to me what the difference 22 is between the quoted language in this FCC 23 order and your definition of cross connect 24 provided at page 24 of your testimony? 25 A I believe our language is a little bit</p>	<p style="text-align: right;">Page 160</p> <p>1 Q Describe for me what is the facility that 2 would be a cross connect that is not a 3 collocation cross connect? 4 A A co-carrier cross connect is not a 5 collocation cross connect 6 Q What types of equipment facilities would a 7 co-carrier cross connect connect? 8 A A co-carrier cross connect would be a 9 cross connect that's -- you can order out 10 of FCC tariff that would -- essentially 11 connects the collocation space of one 12 carrier to the collocation space of 13 another carrier or could also cross 14 connect between exchange carriers or 15 anybody else who needs to cross connect 16 between carriers 17 Q So your testimony is that a -- may I call 18 it a non-collocation cross connect, one 19 type of that would be a connection between 20 two collocated carriers? 21 A My testimony would be that a 22 non-collocation cross connect would be a 23 co-carrier cross connect, which is -- has 24 a different purpose and a different use as 25 opposed to providing collocation</p>
<p style="text-align: right;">Page 159</p> <p>1 more specific as to what types of 2 equipment might be cross connected to 3 Q More specific in that it provides proper 4 names such as main distribution frame or 5 intermediate distribution frame as one of 6 the points that a cross connect would 7 connect to? 8 A Yes 9 Q Do you know why those specific proper 10 nouns have been placed into this 11 definition that appears on page 24? 12 A In the issues, as we have developed it -- 13 or as we understand it is that we're 14 trying to do in the collocation section of 15 the interconnection agreement is limit the 16 cross connect language to a collocation 17 cross connect and not just to a cross 18 connect in general, as there are other 19 types of cross connects that are subject 20 to other jurisdictions and other 21 agreements. So we're simply trying to 22 make sure that we're making the definition 23 of cross connect sufficiently narrow to 24 only include collocation cross connects in 25 this particular section of the agreement</p>	<p style="text-align: right;">Page 161</p> <p>1 conductivity between BellSouth and the 2 CLP 3 Q But a co-carrier cross connect would run 4 between the facilities of two collocated 5 carriers, is that correct? 6 A That's my understanding, yes 7 Q Looking at Exhibit 10, the quoted language 8 at page 58 9 A Okay 10 Q Would a co-carrier cross connect fall 11 within this definition provided here? 12 A Yes, it would 13 Q Is there another type of cross connection 14 that is not a collocation cross 15 connection? 16 A There may be. I'm not aware of one that I 17 could name at this moment 18 Q Is it your position that a co-carrier 19 cross connect should not be provided to 20 the Joint Petitioners? 21 A I believe the co-carrier cross connects 22 should be provided to the Joint 23 Petitioners, and they're available to them 24 subject to the FCC tariff that they're 25 tariffed in</p>

<p style="text-align: right;">Page 162</p> <p>1 Q Is that a BellSouth tariff?</p> <p>2 A Yes</p> <p>3 Q Do you know what the rates are for a</p> <p>4 co-carrier cross connect?</p> <p>5 A I do not</p> <p>6 Q And do you know what rates would be</p> <p>7 applied to a collocation cross connect</p> <p>8 under Attachment 4?</p> <p>9 A I don't know them offhand, no</p> <p>10 Q Do you know whether the rates for a</p> <p>11 co-carrier cross connect are developed in</p> <p>12 accordance with TELRIC?</p> <p>13 A I would assume that they're not</p> <p>14 Q Do you know whether a collocation cross</p> <p>15 connect rate is developed in accordance</p> <p>16 with TELRIC?</p> <p>17 A I would assume that they are</p> <p>18 Q Is it your position that different rates</p> <p>19 should indeed apply to these two different</p> <p>20 facilities?</p> <p>21 A I believe they have different purposes and</p> <p>22 they have different applications as well</p> <p>23 as different rules of law that apply to</p> <p>24 them, different jurisdiction, so it makes</p> <p>25 sense there would be potentially different</p>	<p style="text-align: right;">Page 164</p> <p>1 Q Would telecommunications traffic pass over</p> <p>2 a co-carrier cross connect?</p> <p>3 A Probably, that -- yes</p> <p>4 Q Is it your testimony that the principal</p> <p>5 difference between a co-carrier cross</p> <p>6 connect and a collocation cross connect is</p> <p>7 whether the facility attaches to BellSouth</p> <p>8 equipment?</p> <p>9 A No, because I believe in a co-carrier</p> <p>10 cross connect, some of our equipment is</p> <p>11 involved in providing that cross connect</p> <p>12 capability. I think the difference has to</p> <p>13 do with the service or the allocation</p> <p>14 that's being purchased or used in</p> <p>15 conjunction with the cross connect</p> <p>16 Q What is a type of service that would be</p> <p>17 used in conjunction with a cross connect?</p> <p>18 A A collocation cross connect would be --</p> <p>19 services would be any kind of UNEs or</p> <p>20 other types of services, access services</p> <p>21 that -- I believe I even specify a couple</p> <p>22 of them in my testimony. I'll have to</p> <p>23 look to see exactly which ones I named</p> <p>24 Unbundled loops, unbundled local</p> <p>25 switching, unbundled transport, unbundled</p>
<p style="text-align: right;">Page 163</p> <p>1 rates, but I don't know if the rates are</p> <p>2 actually different</p> <p>3 Q What is the purpose of a co-carrier cross</p> <p>4 connection?</p> <p>5 A Co-carrier cross connection provides cross</p> <p>6 connects between two different carriers</p> <p>7 It doesn't connect to the incumbent,</p> <p>8 BellSouth. One example would be if you</p> <p>9 needed to connect -- one CLP wanted to</p> <p>10 connect to their customers that have a</p> <p>11 service they provide to some equipment in</p> <p>12 another CLP's collocation space for a</p> <p>13 service that CLP provides. And so one</p> <p>14 method for doing that is the use of a</p> <p>15 co-carrier cross connect</p> <p>16 Q And what is the purpose of a collocation</p> <p>17 cross connect?</p> <p>18 A Collocation cross connect is to connect the</p> <p>19 collocation space of the CLP with the</p> <p>20 services or bundled network elements that</p> <p>21 they're purchasing and using with</p> <p>22 BellSouth or the incumbent</p> <p>23 Q Would telecommunications traffic pass over</p> <p>24 collocation cross connect?</p> <p>25 A Yes</p>	<p style="text-align: right;">Page 165</p> <p>1 loop port combinations, et cetera</p> <p>2 Q Are you quoting from page 27 of your</p> <p>3 testimony?</p> <p>4 A Yes, I am</p> <p>5 Q And a collocation cross connect, as</p> <p>6 described on this page, would, to the best</p> <p>7 of your knowledge, be priced in accordance</p> <p>8 with TELRIC?</p> <p>9 A Yes</p> <p>10 Q What types of service would not be</p> <p>11 appropriately provided over a collocation</p> <p>12 cross connect?</p> <p>13 A If BellSouth reached an agreement with a</p> <p>14 CLP to provide an information service or</p> <p>15 internet service or provide a non-251</p> <p>16 service, DSL, for example, the connection</p> <p>17 between BellSouth and that -- and a CLP</p> <p>18 would not be via collocation cross</p> <p>19 connect, it would be via some other type</p> <p>20 of cross connection</p> <p>21 Q In that instance, what would the end point</p> <p>22 be of the cross connect facility?</p> <p>23 A It could be -- one end point would be</p> <p>24 BellSouth equipment by BellSouth services,</p> <p>25 the other end point would be the CLP's</p>

<p style="text-align: right;">Page 166</p> <p>1 equipment, which may or may not be 2 collocated 3 Q Do CLPs sometimes provide DSL service to 4 their end users over UNEs? 5 A Yes 6 Q Is a collocation cross connect the proper 7 facility to be used for a CLP to gain 8 access to UNEs? 9 A Yes 10 Q Okay Describe the scenario under which 11 an internet service would be provided by 12 BellSouth to a CLP 13 A There could be a service where BellSouth 14 has developed a wholesale internet access 15 service or provided any number of 16 information services, whether it be an 17 e-mail hosting or web hosting or other 18 types of services, that a CLP would choose 19 to buy or use Those are very competitive 20 services that are available on the 21 open-ended marketplace BellSouth offers 22 them as well as other -- many other 23 competitors offer those type of 24 internet-based services So that's one 25 situation where a CLP could be buying</p>	<p style="text-align: right;">Page 168</p> <p>1 be -- I don't know 2 Q Are you familiar with the term local 3 channel? 4 A I have some limited knowledge of what a 5 local channel is 6 Q Please describe what your knowledge is of 7 that term 8 A It's actually way outside my expertise, 9 but I'll see if I can bumble together some 10 description of a local channel It's 11 always difficult when you've heard terms 12 used so many times and you have to 13 actually think of how to define it 14 Q If you need to define by example, that 15 would be helpful 16 A My understanding -- very limited as it is 17 in the local channel is a particular 18 connection or single connection on what we 19 would refer to as a channel bank, so I 20 believe it's just kind of a common or a 21 local vernacular for a type of 22 connection 23 Q Do you know what it would connect with, 24 what -- 25 A No, I would not</p>
<p style="text-align: right;">Page 167</p> <p>1 information or internet service from 2 BellSouth 3 Q On a retail basis? 4 A Retail and wholesale And information 5 services is a bit -- because they're 6 another carrier and not actually the end 7 user, we would probably dub that as a 8 wholesale service, but it would still be a 9 non-regulated commercial agreement between 10 the two companies 11 Q Why would it be a non-regulated service? 12 A Because it's BellSouth providing the 13 competitive information service to the CLP 14 on commercially agreed to terms 15 Q If a CLP is collocated in a BellSouth 16 central office, is there a facility that 17 would permit them to access a leased mux? 18 A I don't know 19 Q Is there a facility that would allow that 20 collocated facility to access transport 21 provided by another carrier who is not 22 collocated in the office but had a 23 presence in the office? 24 A I don't know whether that would be a 25 co-carrier cross connect or if that would</p>	<p style="text-align: right;">Page 169</p> <p>1 Q Do you have an understanding as to the 2 rates that apply to a local channel? 3 A No, I do not 4 Q Could a collocated CLP connect to entrance 5 facilities owned by another 6 telecommunications carrier? 7 A I don't know 8 Q What types of conductivity is BellSouth 9 prepared to offer to the CLPs to be 10 connected to equipment within a central 11 office where they are collocated? 12 A What types of conductivity? I'm aware of 13 two that we offer One is a collocation 14 cross connect and the other is a 15 co-carrier cross connect I also believe 16 that the CLPs have the ability to do some 17 of their own construction and run some of 18 their own cables through some BellSouth 19 territory that -- BellSouth areas, that 20 type of thing But the two services we 21 offer that I'm aware of are co-carrier 22 cross connects and collocation cross 23 connects 24 Q Please turn back to Exhibit 9, what's 25 numbered page 12 up at the top And</p>

<p style="text-align: right;">Page 170</p> <p>1 please review Section 3 10 Do you see 2 there's only one section provided here and 3 there's no competing language, so that 4 indicates that this particular provision 5 has been settled at this time Do you 6 understand that' 7 A Yes 8 Q It states that a co-carrier cross connect, 9 which is abbreviated CCXC, are cross 10 connects between customer and another 11 collocated telecommunications carrier 12 other than BellSouth Do you see that' 13 A Yes 14 Q Under this statement, would a CLP be 15 permitted to obtain a CCXC to connect with 16 a noncollocated telecommunications 17 carrier? 18 A I don't believe this language would allow 19 them to do that 20 Q Does that statement at Section 3 10 21 comport with what your understanding is of 22 a co-carrier cross connect? 23 A Yes 24 Q So just to make sure that I understand 25 your position correctly You stated that</p>	<p style="text-align: right;">Page 172</p> <p>1 Q Are there any other types of panel that a 2 collocation cross connect could terminate 3 to? 4 A There could be other types of panels out 5 there that form the same function, that 6 have a different, quote, unquote, specific 7 or technical name I wouldn't be able to 8 name them right now 9 Q Do you know why only these specific types 10 of frames and panels have been included in 11 BellSouth's preferred definition of cross 12 connect? 13 A I believe it seems to be very specific 14 about the types of panels, but, more 15 importantly, the function that those 16 perform -- those perform in our network 17 Just to be specific and that our 18 definition of a cross connect is limited 19 to a collocation cross connect 20 Q Are there types of collocation cross 21 connects that would be excluded by this 22 definition? 23 A Not that I'm aware of 24 Q But you've testified that a collocation 25 cross connect could terminate to a frame</p>
<p style="text-align: right;">Page 171</p> <p>1 a collocation cross connect should connect 2 a collocated carrier to BellSouth 3 equipment within a central office, is that 4 correct? 5 A No, to -- should connect a collocated 6 carrier to the unbundled services, the 7 unbundled transport, accommodations, et 8 cetera that they're purchasing from 9 BellSouth 10 Q Would that include terminating to a 11 multidistribution frame? 12 A I believe so, yes 13 Q And would that include terminating to an 14 intermediate distribution frame? 15 A Yes 16 Q Is there any other type of BellSouth 17 terminating facility that the collocation 18 cross connect could terminate to? 19 A There probably are I don't know if I can 20 name them at this point 21 Q And would that equipment also include 22 terminating to this DSX panel? 23 A Yes 24 Q Or an LGX panel? 25 A Yes</p>	<p style="text-align: right;">Page 173</p> <p>1 that is not the main distribution frame or 2 an intermediary distribution frame' 3 A My testimony is that there may be a 4 particular type of frame that is called 5 something different than one of those 6 particular names that may exist on a 7 network because it's been my familiarity, 8 my experience in the years I've been 9 working in telecom that everything has at 10 least three names, so I don't want to 11 exclude it There may be something that's 12 called the same function and performs the 13 same capability that has a slightly 14 different name, but our position on this 15 issue is that collocation cross connect 16 allows CLPs to collocate and to cross 17 connect to the services they're purchasing 18 from BellSouth and will make available the 19 equipment necessary to do that 20 Q If a CLP requested to obtain a facility 21 that terminated on a frame, the frame was 22 not identified by the proper name, main 23 distribution frame or intermediary 24 distribution frame, would you expect that 25 the CLP would be able to obtain that</p>

<p style="text-align: right;">Page 174</p> <p>1 conductivity under Section 3 9?</p> <p>2 A Yes</p> <p>3 Q And why would that be?</p> <p>4 A Because we're -- the collocation --</p> <p>5 purpose of a collocation cross connect is</p> <p>6 to provide cross connect to the unbundled</p> <p>7 services that you're purchasing from --</p> <p>8 the CLP is purchasing from BellSouth and</p> <p>9 which includes the equipment necessary to</p> <p>10 do that I would not expect to run across</p> <p>11 a frame other than those two Those are</p> <p>12 very generic terms for frames, but I will</p> <p>13 not put it past some local person to be</p> <p>14 calling it something different than the</p> <p>15 main distribution frame or the</p> <p>16 intermediate distribution frame That</p> <p>17 doesn't mean we would not make that</p> <p>18 available</p> <p>19 Q Is a frame a type of connection hardware?</p> <p>20 A Yes</p> <p>21 Q Is a panel a type of connection hardware?</p> <p>22 A Yes</p> <p>23 Q Do you believe that as you look at Section</p> <p>24 3 9, the BellSouth version of the</p> <p>25 definition of cross connect, that what's</p>	<p style="text-align: right;">Page 176</p> <p>1 A Yes, I believe it's very possible that one</p> <p>2 could exist that does not have those two</p> <p>3 names</p> <p>4 Q And it could perform substantially the</p> <p>5 same function as an MD frame or an ID</p> <p>6 frame?</p> <p>7 A It could or could be a frame that we're</p> <p>8 using that could perform a completely</p> <p>9 different function</p> <p>10 Q Further down in the provision at Section</p> <p>11 3 9, BellSouth's version of it, it states</p> <p>12 that a cross connect involving -- or,</p> <p>13 excuse me, involved in connecting</p> <p>14 equipment/facility terminations with</p> <p>15 equipment/facility terminations associated</p> <p>16 with a collocation arrangement either</p> <p>17 physical or virtual is ordered separately</p> <p>18 and is charged at the rates found in</p> <p>19 Attachment 2 or Attachment 4 Can you</p> <p>20 give me a concrete example of a cross</p> <p>21 connect that would fit this description?</p> <p>22 A There's a number of different types of</p> <p>23 cross connects I think in my testimony</p> <p>24 on page 27, top of page 27 we talk</p> <p>25 about -- I reference 2-wire cross</p>
<p style="text-align: right;">Page 175</p> <p>1 provided in these parentheticals are</p> <p>2 intended to be examples, or are they</p> <p>3 intended to be a comprehensive list of the</p> <p>4 type of frame or panel that a cross</p> <p>5 connect could terminate to?</p> <p>6 A I believe that they are the predominant</p> <p>7 examples I don't believe it's designed</p> <p>8 to be a comprehensive list I'm sure if</p> <p>9 we sat two or three technical guys in</p> <p>10 here, they could come up with four or five</p> <p>11 more names for each of those types of</p> <p>12 things</p> <p>13 Q Do you know whether this provision was</p> <p>14 explained to the Joint Petitioners during</p> <p>15 any negotiation call as being simply a</p> <p>16 list of examples that are not intended to</p> <p>17 be comprehensive?</p> <p>18 MR CULPEPPER I object to the</p> <p>19 form of the question I'm not sure that</p> <p>20 was his testimony</p> <p>21 A I don't know</p> <p>22 Q Is your testimony that a frame could exist</p> <p>23 that does not go by the name main</p> <p>24 distribution or intermediate distribution</p> <p>25 frame?</p>	<p style="text-align: right;">Page 177</p> <p>1 connects, 4-wire cross connects, DS-1,</p> <p>2 DS-3, 2-fiber, and 4-fiber cross connects</p> <p>3 Q Are those all types of collocation cross</p> <p>4 connects?</p> <p>5 A Yes</p> <p>6 Q So this provision 3 9 under BellSouth's</p> <p>7 version is intended to discuss collocation</p> <p>8 cross connects?</p> <p>9 A Yes</p> <p>10 Q Are you aware of whether the Joint</p> <p>11 Petitioners are collocated in BellSouth's</p> <p>12 central offices in North Carolina?</p> <p>13 A I don't know</p> <p>14 Q Would you accept that they might be?</p> <p>15 A I would assume they are since they really</p> <p>16 care about this language</p> <p>17 Q How would one of the petitioners connect</p> <p>18 from its collocated facilities to a</p> <p>19 carrier who is not collocated in a CO,</p> <p>20 central office, who's clearly not a</p> <p>21 BellSouth carrier in order to access</p> <p>22 facilities that are not considered UNEs?</p> <p>23 A I would assume they would use one of the</p> <p>24 other types of cross connects that are</p> <p>25 available to them Obviously a</p>

<p style="text-align: right;">Page 178</p> <p>1 collocation cross connect would not be one 2 of those. Either use co-carrier cross 3 connect or some sort of a direct 4 connection that they would put in 5 themselves 6 Q So their choices, in your understanding, 7 are between a cross connect -- strike 8 that -- a collocation cross connect and a 9 co-carrier, correct? 10 A Or a direct connection 11 Q Assuming it's a facility that they wish to 12 obtain from BellSouth, they have two 13 choices, is that correct? 14 A I believe that's correct, yes 15 Q Please turn the page of Exhibit 9 to 16 Provision 3.11. And it states direct 17 connect 18 A Uh-huh 19 Q Is this the type of direct connection that 20 you mentioned a CLEC might provision for 21 itself? 22 A Yes, it is 23 Q And so this would be a facility, according 24 to the language here, that connects 25 between one customer's virtual and/or</p>	<p style="text-align: right;">Page 180</p> <p>1 Public Commission Service. Docket No 2 29242 3 Q Did you assist in preparing the response 4 to this interrogatory? 5 A I did not 6 MR CULPEPPER. And I just want to 7 reiterate for the record, you know, prior 8 to reaching an agreement with discovery, 9 we'll object to the questioning to the 10 extent it goes beyond North Carolina 11 interrogatories. Go ahead. 12 Q Please turn the page. And do you see that 13 this document states at the top that it is 14 a BellSouth response to Joint Petitioners 15 in this case in North Carolina? 16 A Yes, I do. 17 Q Did you assist in putting together this 18 response? 19 A No, I did not. 20 Q Let me ask you. The request asked 21 BellSouth to identify facilities that are 22 in use in the BellSouth serving wire 23 center to connect CLP facilities to 24 BellSouth facilities that are not 25 considered cross connects, and that term</p>
<p style="text-align: right;">Page 179</p> <p>1 physical collocation arrangement in the 2 same premises, is that correct? 3 A Yes 4 Q So is it fair to say then that a direct 5 connect would only apply in this instance 6 if the CLP were collocated in the CO? 7 A Either virtually or physically, yes 8 Q Is there any other type of direct connect 9 that this provision would encompass? 10 A I don't know. 11 Q Could a co-carrier cross connect be used 12 by a collocated CLP to access the entrance 13 facilities of a third-party carrier? 14 A I don't know. 15 Q Could a co-carrier cross connect be used 16 by a collocated CLP to access a mov. leased 17 by a third-party carrier? 18 A I don't know on that particular one, 19 either 20 (DEPOSITION EXHIBIT NO. 11 WAS MARKED) 21 Q I'm handing you a document that's been 22 marked Exhibit 11. Can you tell me what 23 this document is? 24 A It appears to be a set of interrogatory 25 responses that were given in the Alabama</p>	<p style="text-align: right;">Page 181</p> <p>1 is in quotes, under BellSouth's proposed 2 definition. 3 The response is that BellSouth is 4 not aware of any configuration where CLP 5 facilities are interconnected with 6 BellSouth facilities without the use of 7 cross connections. To your mind, does the 8 use of the term cross connections in this 9 response include collocation cross 10 connections? 11 A Yes. 12 Q Does it include co-carrier cross 13 connections? 14 A Yes. 15 Q Does it include direct connections? 16 A I don't think you would include direct 17 connections because -- I mean, 18 specifically, it's referring to where CLP 19 facilities are interconnected with 20 BellSouth facilities, which is the 21 definition -- or the appropriate cross 22 connect at that point would be a 23 collocation cross connect. The term is 24 used broadly in this response. I mean, 25 cross connects are simply -- its general</p>

<p style="text-align: right;">Page 182</p> <p>1 sense are anything used to connect any two</p> <p>2 things, and I believe that's how it's used</p> <p>3 here, very, very broadly</p> <p>4 Q Are you aware of whether the FCC has held</p> <p>5 that CLPs are impaired without access to</p> <p>6 cross connects?</p> <p>7 MR CULPEPPER I object to the</p> <p>8 form of the question</p> <p>9 A I'm not familiar with any of the specific</p> <p>10 rules and laws that the FCC has done or</p> <p>11 come to in regards to impairment in cross</p> <p>12 connects</p> <p>13 Q Is it your position that what BellSouth is</p> <p>14 offering the Joint Petitioners in this</p> <p>15 case in terms of cross connections is in</p> <p>16 compliance with FCC rules?</p> <p>17 A Yes</p> <p>18 (DEPOSITION EXHIBIT NO. 12 WAS MARKED)</p> <p>19 Q I'm handing you a document that has been</p> <p>20 marked Exhibit 12. Again, we have the</p> <p>21 front page of the Triennial Review Order</p> <p>22 And there are portions behind this front</p> <p>23 page. I direct your attention to the page</p> <p>24 that has been marked at the bottom 229</p> <p>25 It's in the middle of the exhibit</p>	<p style="text-align: right;">Page 184</p> <p>1 sentence?</p> <p>2 A I don't believe they're specifying what</p> <p>3 kind of cross connect, just simply that a</p> <p>4 cross connect must be provisioned between</p> <p>5 the arrangements</p> <p>6 MS JOYCE We've been going for</p> <p>7 about an hour. Would you like to take a</p> <p>8 break, Mr. Fogle?</p> <p>9 THE WITNESS Sure</p> <p>10 (RECESS)</p> <p>11 BY MS JOYCE</p> <p>12 Q Mr. Fogle, to your knowledge, has</p> <p>13 BellSouth ever terminated power to a CLP's</p> <p>14 facilities that were collocated on grounds</p> <p>15 of the privacy infringement committed by</p> <p>16 the CLP?</p> <p>17 A Not that I'm aware of</p> <p>18 Q Has BellSouth ever terminated power to a</p> <p>19 CLP's facilities on the grounds of</p> <p>20 degradation?</p> <p>21 A Not that I'm aware of</p> <p>22 Q Is it your position that the physical</p> <p>23 safety of a person is of the same</p> <p>24 importance as the integrity of BellSouth's</p> <p>25 equipment?</p>
<p style="text-align: right;">Page 183</p> <p>1 Have you ever reviewed these</p> <p>2 paragraphs that appear at pages 229 to</p> <p>3 234?</p> <p>4 A Yes, I have, but it has been quite awhile</p> <p>5 since I've looked at them</p> <p>6 Q I draw your attention to paragraph 373</p> <p>7 It's on page 232</p> <p>8 A There are actually more footnotes than</p> <p>9 there are anything else. Okay</p> <p>10 Q Do you recall whether you relied on this</p> <p>11 paragraph when you wrote your testimony</p> <p>12 for Issue 4-1?</p> <p>13 A I don't recall whether I relied on this or</p> <p>14 not</p> <p>15 Q And I draw your attention to the final</p> <p>16 sentence of paragraph 373. The FCC holds</p> <p>17 here that finally, for a collocated</p> <p>18 competing carrier to access the transport</p> <p>19 facilities terminated in the collocation</p> <p>20 of another carrier, a cross connect must</p> <p>21 be provisioned between collocation</p> <p>22 arrangements. Do you see that?</p> <p>23 A Yes, I do</p> <p>24 Q What type of cross connection do you</p> <p>25 believe the FCC is discussing in this</p>	<p style="text-align: right;">Page 185</p> <p>1 A No. Obviously, physical safety of a</p> <p>2 person is more important than integrity of</p> <p>3 our equipment, but we still hold integrity</p> <p>4 of our equipment pretty high</p> <p>5 Q All right. Please pick up attachment --</p> <p>6 or, excuse me, Exhibit 9 again, which is</p> <p>7 Attachment 4. And please turn to the page</p> <p>8 numbered at the top page 26. And I refer</p> <p>9 you to the section on this page which is</p> <p>10 5.21.2, the BellSouth version of this</p> <p>11 provision</p> <p>12 A Okay</p> <p>13 Q And it states that, except in the case of</p> <p>14 the deployment of an advanced service</p> <p>15 which significantly degrades the</p> <p>16 performance of other advanced services or</p> <p>17 additional voice band services, if a</p> <p>18 customer fails to commence curative action</p> <p>19 within 24 hours and exercise reasonable</p> <p>20 diligence to complete such action as soon</p> <p>21 as possible -- continues to say then and</p> <p>22 only in that event, then BellSouth may</p> <p>23 take such action as it deems necessary to</p> <p>24 eliminate such threat, including, without</p> <p>25 limitation, the interruption of electrical</p>

<p style="text-align: right;">Page 186</p> <p>1 power to customer's equipment Do you see 2 that? 3 A Yes, I do 4 Q And do you understand that the language 5 that appears in bold type regarding if 6 customer fails to commence is in bold 7 because it indicates language that is 8 presently in dispute between the parties? 9 A Yes 10 Q Can you tell me what problem -- what type 11 of problem would the CLP need to address 12 with curative action within 24 hours under 13 this language? 14 A There's a -- I mean, gosh, there's a 15 number of different areas that this could 16 be One example would be with the advent 17 of electronic equipment, digital 18 equipment, special equipment designed to 19 do their services, innovative services, 20 computer processors getting faster There 21 is a number of issues of interference that 22 can happen as a result of that equipment 23 if that equipment happens to be faulty 24 If it's emitting high-frequency noise 25 through the airways or transmitting</p>	<p style="text-align: right;">Page 188</p> <p>1 A No, and I don't think that's the case 2 That would be physical harm, at least 3 direct physical harm to the person We 4 take service quality really, really 5 important And especially if you think of 6 the service that the CLP may be 7 interfering with may be a 911 service or a 8 residential phone service to an elderly 9 person who needs access to 911 or other 10 types of services that may at some point 11 be necessary to support their life and 12 they're relying on us to provide those 13 services And so if our service quality 14 is being degraded by some piece of noisy 15 equipment that's in the CLP's collocation 16 cage, then, you know, we need to allow the 17 local management to be -- once they've 18 determined that is the cause 19 beyond a reasonable doubt, to take the 20 steps necessary to cure that, even if the 21 CLP will not 22 Q If an elderly person needs access to 911 23 and because of a CLP's noisy equipment 911 24 is not available, would that pose 25 immediate risk of physical harm to an</p>
<p style="text-align: right;">Page 187</p> <p>1 high-frequency noise on some of the 2 connection points that it's using, that 3 could cause interference with equipment 4 either of BellSouth's or other carriers 5 who are collocated in the same central 6 office It's referred to sometimes as 7 equipment being noisy, making a lot of -- 8 setting off a lot of electromagnetic 9 noises that interfere with equipment that 10 is nearby 11 Q And so in the event that this equipment 12 was noisy, under this language, is it 13 correct that the petitioner, the CLP, must 14 commence curative action within 24 hours 15 and exercise reasonable diligence to 16 complete such action as soon as possible 17 in order to avoid BellSouth taking 18 whatever action it deems necessary, 19 including interruption of electrical 20 power? 21 A Yes 22 Q Would there need to be a threat of 23 physical harm to a person arising out of 24 that noisy equipment in order for this 25 right of BellSouth to be triggered?</p>	<p style="text-align: right;">Page 189</p> <p>1 individual? 2 A It could, yes 3 Q Could there be an instance where a noisy 4 equipment did not pose such a threat to an 5 individual? 6 A It would depend on what it's interfering 7 with, what services or capabilities or 8 function or equipment that it's 9 interfering with 10 Q But is it possible that noisy equipment 11 would not pose any threat of danger to an 12 individual? 13 A Yes 14 Q Under this language, would a breach of 15 customer privacy be a type of problem that 16 must be addressed by curative action in 17 order to avoid BellSouth's having to take 18 action, including interrupting power? 19 A I don't see anything in Section 5 21 2 20 that discusses privacy, although I could 21 be missing it because it's a long section 22 Q Please review section 5 21 2 Under 23 BellSouth's version of interference or 24 impairment, do you see a provision there 25 related to compromising the privacy of</p>

<p style="text-align: right;">Page 190</p> <p>1 communications?</p> <p>2 A You're referring to the second paragraph?</p> <p>3 Q BellSouth's version of --</p> <p>4 A Yes</p> <p>5 Q -- this provision</p> <p>6 A It starts with open to CLECs and then has</p> <p>7 BellSouth version</p> <p>8 Q Yes</p> <p>9 A Okay. Again, I don't see anything that</p> <p>10 talks about customer privacy in this</p> <p>11 particular paragraph</p> <p>12 Q What do you believe the item that's</p> <p>13 enumerated 3 in this paragraph refers to,</p> <p>14 knowingly or unlawfully compromising the</p> <p>15 privacy of any communications routed</p> <p>16 through the premises?</p> <p>17 A I don't have an Item No. 3 in this</p> <p>18 paragraph</p> <p>19 Q Are you looking at page 25?</p> <p>20 MR CULPEPPER Part of his is --</p> <p>21 is highlighted. It's difficult to read</p> <p>22 I don't know whether that's the issue or</p> <p>23 not</p> <p>24 Q May I see your exhibit?</p> <p>25 A Yeah</p>	<p style="text-align: right;">Page 192</p> <p>1 types of problems that, if not cured</p> <p>2 within 24 hours or a reasonable period,</p> <p>3 BellSouth could use as grounds to take</p> <p>4 action, including interrupting power?</p> <p>5 A I believe it would, yes</p> <p>6 Q Again, I ask you to turn back to Provision</p> <p>7 5 21 1 on page 25. And look at the clause</p> <p>8 that's enumerated No. 1 where it states</p> <p>9 significantly degrades or impairs. Do you</p> <p>10 see that?</p> <p>11 A Yes</p> <p>12 Q And do you see that the words or impairs</p> <p>13 are in bold?</p> <p>14 A Yes</p> <p>15 Q And do you understand that this means this</p> <p>16 is language that remains in dispute as</p> <p>17 between the parties?</p> <p>18 A Yes</p> <p>19 Q Now, please turn the page to look at</p> <p>20 Provision 5 21 2. Does the word impairs</p> <p>21 appear in that first sentence?</p> <p>22 A I don't see the word impairs in the</p> <p>23 BellSouth version of that language</p> <p>24 Q And do you know why impairs would have</p> <p>25 been inserted into 5 21 1 but not into</p>
<p style="text-align: right;">Page 191</p> <p>1 Q Oh, no, I -- you may have missed. I'd</p> <p>2 asked you to read page 25</p> <p>3 A Oh, that would --</p> <p>4 Q It's 5 21 1</p> <p>5 A Aha</p> <p>6 MR CULPEPPER Okay</p> <p>7 A I've been on the wrong page before. I</p> <p>8 will be on the wrong page again. All</p> <p>9 right. Now, let's see if we can find it</p> <p>10 this time</p> <p>11 Okay. I now believe I'm looking</p> <p>12 at the language that you were wanting me</p> <p>13 to look at</p> <p>14 Q All right. So in 5 21 1, there are four</p> <p>15 types of problems that CLPs are cautioned</p> <p>16 not to cause. Degradation or impairing</p> <p>17 service, endangering equipment and</p> <p>18 knowingly or unlawful compromise of</p> <p>19 privacy of communications or creating an</p> <p>20 unreasonable risk of injury or death.</p> <p>21 Would you agree with that assessment?</p> <p>22 A Yes</p> <p>23 Q Now, if you turn back to section 5 21 2,</p> <p>24 could the knowing or unlawful compromising</p> <p>25 of communications privacy be among those</p>	<p style="text-align: right;">Page 193</p> <p>1 5 21 2?</p> <p>2 A No, I don't know why</p> <p>3 Q Is there a difference in your mind between</p> <p>4 something that degrades and something that</p> <p>5 impairs?</p> <p>6 A By my definition of those two words,</p> <p>7 something that degrades a service still</p> <p>8 makes it useful, but it's somehow less</p> <p>9 than it was before, whereas if something</p> <p>10 is impaired, it could include making it</p> <p>11 not function at all. So I would think</p> <p>12 that impairs is probably the stronger word</p> <p>13 than degrades</p> <p>14 Q Do you think that under your assessment of</p> <p>15 what the word impairs means -- would</p> <p>16 something that impairs service be subject</p> <p>17 to the provisions of Section 5 21 2?</p> <p>18 A Yes</p> <p>19 Q And why do you believe that?</p> <p>20 A I guess this is fairly straightforward</p> <p>21 There's a lot of words here, pretty</p> <p>22 straightforward approach. You know,</p> <p>23 BellSouth is simply trying to protect the</p> <p>24 quality of its service, protect the assets</p> <p>25 it's deployed, its people, its customers</p>

<p style="text-align: right;">Page 194</p> <p>1 We've got a lot of responsibilities to do 2 that And if -- you know, if -- we take 3 that responsibility very, very seriously, 4 and the last thing we would want to have 5 someone -- if we simply had language that 6 said significantly degrades and they said, 7 we weren't degrading you, we were 8 impairing you, that's not covered, then 9 they -- over some caution, trying to be a 10 little bit broader of what types of either 11 impairments or degradations there could 12 be 13 Q So is it your position that Joint 14 Petitioners should read BellSouth's 15 proposed language for 5 21 2 as if the 16 word impairs appeared in it? 17 A It's my understanding that the bold 18 language is the language that we have 19 proposed that you guys are -- you guys, 20 being the CLPs -- the Joint Petitioners, 21 my apology, are opposed to So that 22 should read as we proposed it 23 Q Right But is the -- you've already 24 testified the word impairs does not appear 25 in BellSouth's proposed language for</p>	<p style="text-align: right;">Page 196</p> <p>1 Are there any other instances that 2 you would deem to be extremely rare and 3 severe? 4 A If the -- I mean, you can speculate 5 probably all day long about different 6 things If the CLP was engaged in some 7 sort of fraudulent activity and -- or, I 8 mean, there's just a number you could 9 speculate that could potentially happen, 10 although extremely rare, that could cause 11 BellSouth to seek interruption or 12 termination of the CLP's power to their 13 service 14 Q Do you know whether BellSouth has ever 15 terminated power to a CLP on the grounds 16 because the CLP was -- 17 A No, I don't believe we've ever terminated 18 a CLP's power 19 Q Can you think of any other instances that 20 would be deemed extremely rare and severe 21 such that BellSouth would consider 22 interrupting the power? 23 A Well, if the CLP's equipment was smoking, 24 we would probably turn the power off to 25 it If -- So, in other words, if it was</p>
<p style="text-align: right;">Page 195</p> <p>1 5 21 2 2 A I don't -- 3 Q My question is, should the Joint 4 Petitioners be reading this proposed 5 language as if the word impairs appears 6 there? 7 A I apologize, I thought you were talking 8 about the previous page It would be 9 cleaner to have that -- to have the same 10 language in both paragraphs 11 Q Would you recommend that the word impairs 12 be inserted into -- 13 A Yes -- 14 Q -- that section? 15 A -- I would Yeah 16 Q At page 37 of your testimony, lines 22 to 17 25 18 A Which page is that, again? 19 Q 37 It states that BellSouth would only 20 consider interrupting or terminating a 21 CLP's power in extremely rare and severe 22 instance, such as if there was a 23 substantial threat of damage to property 24 or injury or death to any person in 25 BellSouth's premises</p>	<p style="text-align: right;">Page 197</p> <p>1 on fire There are -- could be some 2 other things it could be doing 3 Again, I believe it's important to 4 leave some leeway for local management to 5 make a determination What's 6 beyond a reasonable doubt that a 7 particular CLP's equipment is providing 8 interference or is a risk to either 9 BellSouth's equipment, personnel, services 10 or other collocated CLPs, then they need 11 to have the leeway, once proven 12 beyond a reasonable doubt, to disconnect 13 the power to help cure that if the CLP 14 won't take action on their own 15 Q On page 38 of your testimony, lines 1 to 16 2, do you see that BellSouth would use its 17 best efforts to provide immediate notice 18 to the CLP prior to taking any action? 19 A Yes 20 Q And you also say on page 32 of your 21 testimony, line 17 to 18, BellSouth will 22 provide notice to the CLP before taking 23 the action, if possible Were those two 24 sentences intended to have the same 25 meaning?</p>

<p style="text-align: right;">Page 198</p> <p>1 A Yeah. I believe they have the same 2 meaning 3 Q So BellSouth is willing to use best 4 efforts to notify a CLP before turning off 5 the power? 6 A Yes 7 Q And that means that it will provide 8 notice, if possible? 9 A Yes 10 Q Can you tell me what lengths BellSouth 11 would go to to provide that notice? 12 A I imagine we would call, we would page, we 13 would probably write letters, e-mails, may 14 even walk over and talk to the people if 15 it's collocation where we know the people 16 personally. Could take any number of 17 forms and actions. Obviously, it's 18 something that's important, so I even 19 expect to have senior management folks 20 within BellSouth to contact their 21 counterparts at the CLPs to discuss the 22 issue, if action is not being taken on a 23 local level 24 Q Are you aware that the term best efforts 25 is often used in contracts with a specific</p>	<p style="text-align: right;">Page 200</p> <p>1 I don't see any real reason why it would 2 not appear in this sentence 3 Q Are you aware as to any position BellSouth 4 has with respect to inserting the words 5 best efforts into the terms that are 6 included in the interconnection agreement? 7 A I believe, generally speaking, we're 8 hesitant because best effort means you're 9 going to exhaust yourself to do whatever 10 it is that you're saying you're going to 11 do, so we're hesitant, as anybody would 12 be, to put themselves to that obligation 13 But in this particular situation, 14 it's obviously an emergency of some sort, 15 we are going to do exactly that, which is 16 do everything we can to notify the CLP 17 that their equipment is causing a 18 significant problem and needs to be fixed 19 as quickly as possible 20 I mean, it would be inappropriate 21 for us to send you an e-mail, never make a 22 contact, and we would do multiple parallel 23 paths of contact to make sure that the CLP 24 was well aware of the situation before any 25 action was taken</p>
<p style="text-align: right;">Page 199</p> <p>1 meaning? 2 A Yes 3 Q And do you know what that meaning is? 4 A My description of it is probably not the 5 legal definition, is that we would exhaust 6 ourselves attempting every means we know 7 of to provide that communication and 8 notice 9 Q And I'll draw your attention one last time 10 to section 5.21.2 of Exhibit 9, which is 11 the draft of Attachment 4 12 A Yes 13 Q And there is a statement after the 14 highlighting, BellSouth will provide 15 notice to customer prior to or if made 16 impossible due to the nature of the threat 17 imposed, as soon as possible after the 18 taking of such action. Do you see that? 19 A Yes 20 Q Do you know why the words best efforts 21 don't appear in that sentence? 22 A No, I don't 23 Q In your mind, should the words best 24 efforts appear in that sentence? 25 A I believe we would do our best efforts, so</p>	<p style="text-align: right;">Page 201</p> <p>1 Q Is it your testimony that terminating 2 power to a CLP's facilities is a serious 3 action to be taken? 4 A It's very serious. We would never take it 5 lightly 6 Q Please turn to page 34 of your testimony 7 Lines 15 to 17. And it states that the 8 CLP has the right to submit its dispute to 9 the Commission and present evidence 10 showing why it should not be required to 11 clear the interference or impairment 12 identified by BellSouth. Do you see that? 13 A Which page, again? 14 Q 34 15 A Sorry, I was, again, on the wrong page 16 MR CULPEPPER. Did you say lines 17 14 through 17? 18 MS JOYCE. That's right 19 A Yes, I see that 20 Q Would the CLP have the right to submit a 21 dispute if BellSouth had notified it it 22 was going to turn off its power? 23 A Yes, I believe so 24 Q What would BellSouth do if a CLP had a 25 complaint pending at the Commission that</p>

<p style="text-align: right;">Page 202</p> <p>1 in the complaint stated that BellSouth was 2 going to terminate the CLP's power? 3 A I think it would depend on the nature of 4 the interference. If it was a minor 5 interference or a lesser impairment of 6 some sort that we've identified that we 7 could tolerate for a while, we would 8 probably let that complaint work its 9 course out and the dispute work its way 10 through the Commission in some sort of 11 normal or potentially expedited fashion. 12 If it was truly an emergency 13 situation that required very quick action 14 in 24 to 48 hours, I believe we would 15 probably ask the Commission to convene in 16 some sort of an emergency hearing to hear 17 the issue as quickly as possible. 18 hopefully within 24 to 48 hours, to 19 resolve if we are in the right or in the 20 wrong. 21 Q So BellSouth would ask for that 22 expeditious treatment? 23 A If we felt like we had time to wait to ask 24 for that, we probably would. 25 Q Is the Commission the only tribunal that a</p>	<p style="text-align: right;">Page 204</p> <p>1 exhibit where section 13, resolution of 2 disputes appears. And please review 3 section 13.1 at the bottom of this page 4 that's labeled BellSouth version, and 5 review that language? 6 A Uh-huh. 7 (PAUSE) 8 MR CULPEPPER: Now, this excerpt 9 comes from the general terms and 10 conditions section of the interconnection 11 agreement that's in dispute, right? 12 MS JOYCE: That's my 13 understanding. 14 MR CULPEPPER: Okay. 15 A Okay. I've read that section. What was 16 your question, again? 17 Q Does this section under BellSouth's 18 language include the right to go to a 19 court of law? 20 MR CULPEPPER: Object to the form 21 of the question. What type of disputes 22 are we talking about? 23 A I'm not sure what rights this truly gives 24 the CLPs in terms of who they can take a 25 dispute to or even necessarily the nature</p>
<p style="text-align: right;">Page 203</p> <p>1 CLP should have a right to submit such a 2 complaint? 3 A There is probably applicable law that 4 allows them to go to other appropriate 5 jurisdictions for various complaints. 6 Q Would they be able to go to a court of 7 law? 8 A I don't know necessarily whether they 9 could or could not. I'm not familiar with 10 the appropriate jurisdiction that would 11 apply. 12 (DEPOSITION EXHIBIT NO. 13 WAS MARKED) 13 Q I'm handing you a document that's been 14 marked Exhibit 13. Have you seen this 15 document before? 16 A I may have. Lots of contracts start off 17 similar to this, so it looks familiar, but 18 it may not be one that I've actually 19 specifically seen. 20 Q All right. Would you accept that this is 21 the general terms and conditions section 22 of the interconnection agreement that's in 23 issue in this case? 24 A Yes, I would accept that. 25 Q Please turn to the second page of this</p>	<p style="text-align: right;">Page 205</p> <p>1 of the disputes. I'm not familiar with 2 the general terms and conditions. 3 Q When you testified at page 34 regarding 4 the CLP's right to submit a dispute, did 5 you intend to refer to the resolution of 6 disputes language in this section? 7 A Actually, I was referring more to the 8 general fact the CLPs seemed to have the 9 right to dispute whatever they want to 10 with the Commission and can take just 11 about any issue, whether it's part of this 12 arbitration or part of 25.1 agreement or 13 just a general complaint between BellSouth 14 and the CLPs, that they continue to have 15 that right and are often heard at 16 Commissions. They act as an arbiter 17 between CLPs and BellSouth in a number of 18 areas, anyway. 19 Q Have you ever reviewed the general terms 20 and conditions document that is in front 21 of you in any form as regards BellSouth 22 and the Joint Petitioners? 23 A I do not believe I have, no. 24 Q Do you believe that disputes regarding 25 service degradation and impairment and the</p>

<p style="text-align: right;">Page 206</p> <p>1 possibility of power termination should be 2 governed by the dispute resolution in the 3 general terms and conditions? 4 A To a point, yes To the degree we can 5 wait for a normal 60-day process or 6 expedited 60-day process or even longer -- 7 I mean, these disputes and arbitrations 8 can take months to resolve My concern is 9 oftentimes we're out -- there's a real 10 word complication here in that services of 11 one company is impacting or impairing or 12 degrading the services of another company, 13 which may even not be BellSouth May also 14 be impairing or degrading the services or 15 the usefulness of a service for an end 16 user And in that real world situation 17 where that is happening, sometimes it's 18 important to be able to act and respond to 19 cure those issues faster than the normal 20 dispute resolution process would allow 21 A good example of that would be if 22 the CLP's equipment was on fire and we 23 needed to disconnect the power to the 24 equipment before the firemen went into 25 that collocation area to spray water on</p>	<p style="text-align: right;">Page 208</p> <p>1 rooms need to take a step back, let them 2 take action, and then sort it out 3 Q And who would decide where the CLP should 4 submit a complaint? 5 A I believe the CLPs would decide where they 6 would submit a complaint 7 Q In your testimony just now, you mentioned 8 that it could be the service of an entity 9 other than BellSouth whose service is 10 being degraded? 11 A That is correct 12 Q Whose entity could that be? 13 A It could be a third-party's CLP who's also 14 collocated in the same building 15 Q Could it be a CLP that was not collocated 16 in the same building? 17 A It could be anybody who has services 18 running through that facility either 19 because they're collocated or not 20 collocated 21 Q Could it be an interexchange carrier? 22 A Could be 23 Q For any one CO, would you be able to 24 identify for the Joint Petitioners which 25 carrier's service runs through that CO?</p>
<p style="text-align: right;">Page 207</p> <p>1 the equipment to put the fire out, 2 everyone would consider it very reasonable 3 for BellSouth to take that action 4 On the other end, if there is a 5 very, very minor infraction, that is not 6 reasonable for BellSouth to disconnect the 7 power, it would be appropriate for us to 8 go through the dispute process, take three 9 to six months, whatever the case would be, 10 to resolve that 11 The problem is finding that slice 12 in the middle between what is reasonable 13 and what is unreasonable And in our 14 view, that is largely a local management 15 decision with the appropriate caution that 16 if they believe it's a significant service 17 degradation or an impairment that they be 18 allowed to take action after we have done 19 what we consider our best efforts to 20 communicate to the CLP and allow them to 21 resolve it In essence, the local 22 management needs to be in this together, 23 all of us providing great service to all 24 of our customers in a safe way And 25 sometimes those of us who sit in these</p>	<p style="text-align: right;">Page 209</p> <p>1 A I don't know 2 Q Could you please pick up Exhibit 9 again 3 and look at the provision on what is 4 marked as page 25, which is section 5 21 1 5 of Attachment 4 6 A Okay Page 25, I believe I am there 7 Q Okay Item 1 in BellSouth's version that 8 it has proposed for this section includes 9 the words significantly degrades or 10 impairs from the service provider's 11 perspective Who would be the service 12 provider in that language? 13 A It could be BellSouth It could be one of 14 BellSouth's customers It could also 15 be -- it's kind of -- service provider 16 is kind of a global term for anybody 17 providing a service 18 Q Would it include a collocated CLP? 19 A Yes 20 Q Would it include an interexchange carrier? 21 A Yes, it would 22 Q What would be the standard of care that 23 would be associated with the service 24 provider's perspective in terms of is 25 there any objective standard that defines</p>

<p style="text-align: right;">Page 210</p> <p>1 when their perspective reasonably 2 demonstrates that there's significant 3 degradation or impairment of their 4 service? 5 A Well, most service providers determine 6 there's a significant degradation or 7 impairment when their end user customer is 8 calling and saying their service is not 9 working for them in some way 10 Then at that point, they 11 develop -- they start doing root cause 12 analyses or troubleshoot the service and 13 try to determine the cause of that. You 14 know, usually the issues are resolvable. 15 Sometimes they're not. On rare occasions, 16 it could be because of noise or other 17 kinds of issues from a nearby piece of 18 equipment or from another service that 19 someone else is providing 20 Q And if a service provider contacted 21 BellSouth and said that, from their 22 perspective, their service was being 23 significantly degraded, would BellSouth 24 perform any investigation related to their 25 complaint?</p>	<p style="text-align: right;">Page 212</p> <p>1 bridge established that it would have the 2 service provider being impaired. 3 BellSouth, and the CLP, all of them 4 working together to resolve the issue 5 If it's a service issue, that 6 service provider is going to be want to be 7 involved with the person who's causing 8 that degradation or impairment. And if 9 BellSouth can help facilitate that, they 10 will -- or we will, I should say 11 Q Is it the case that the complaining 12 service provider could be a customer of 13 BellSouth? 14 A Yes 15 Q And would information related to that 16 customer be something to be held private, 17 in your understanding? 18 A When you say a customer, you're referring 19 to a retail customer or a wholesale 20 customer? What kind of customer are you 21 referring to? 22 Q Any kind of customer 23 A Any kind. I would venture there are 24 probably aspects of the service that's 25 being provided to that customer that could</p>
<p style="text-align: right;">Page 211</p> <p>1 A Absolutely 2 Q Would BellSouth make its own determination 3 as to whether their service is being 4 significantly degraded? 5 A Whether the service provider's service was 6 being degraded? 7 Q When the complaining service provider's 8 service -- 9 A It would probably be very difficult for us 10 to clarify what their -- how their 11 service is behaving or performing because 12 we wouldn't have any testing capabilities 13 to do that. But I do believe we would be 14 able to verify with them what they believe 15 is the source of their degradation or the 16 source of their impairment and assist with 17 the technical analysis and the root cause 18 analysis of that 19 Q Do you know whether -- when the CLP 20 alleged to be creating this degradation is 21 notified of the problem, would the CLP be 22 told who the complainant party was? 23 A In a real world situation, I would imagine 24 if this was a serious impairment or 25 degradation, there would be a conference</p>	<p style="text-align: right;">Page 213</p> <p>1 be considered proprietary or private. I 2 believe that the service provider that is 3 of that customer, in their interest of 4 having the significant degradation of the 5 impairments stop, would be more than happy 6 to work through those issues to resolve 7 the issue. I mean, the issue is they 8 wanted service to start working again or 9 no longer be impaired. That's what takes 10 paramount in that situation 11 Q If the complaining service provider 12 requested that BellSouth not identify them 13 to the allegedly offending CLP, would 14 BellSouth honor that request? 15 A I don't know why they'd request that, but 16 we would probably try. 17 Q Mr. Fogle, can you tell me what are the 18 nature of the costs that BellSouth incurs 19 when it prepares collocations based on a 20 CLP? 21 A The nature of the costs, there's 22 obviously -- and I won't talk about the 23 specific rate elements and pieces and 24 parts of the actual -- how those get 25 billed because I'm not familiar with</p>

<p style="text-align: right;">Page 214</p> <p>1 that But to prepare any type of space, 2 including collocation space, you have to, 3 you know, physically clear the floor or 4 make the space available You have to 5 bring power, service, and other 6 communications or cross connect 7 capabilities to that space You have to 8 account for the heating and ventilation, 9 HVAC, requirements of the equipment that 10 is going to be in that space, and 11 essentially make it available to support 12 whatever equipment is going to be in that 13 space Mostly it's infrastructure type of 14 costs that are associated with that 15 And those costs would include the 16 engineering work associated with that as 17 well as potentially construction work 18 associated with bringing the power and the 19 ventilation as well as other types of 20 connections into that space 21 Q And is it your position that BellSouth is 22 entitled to recover those costs? 23 A Yes 24 Q And do you know how BellSouth ensures that 25 it recovers those costs from a CLP?</p>	<p style="text-align: right;">Page 216</p> <p>1 the duration of whatever service is being 2 ordered 3 Q With respect to Issue 4-3 that you've 4 provided testimony on, do you understand 5 what the nature of the Joint Petitioners' 6 concern is regarding this issue? 7 A I have to see which one 4-3 actually is 8 Q It starts at your page 38 in your 9 testimony 10 A Okay Thank you Okay Could you repeat 11 your question for me, again? 12 Q Do you understand what the nature of Joint 13 Petitioners' concern is with regard to 14 Issue 43 -- 4-3? 15 A I honestly don't understand the Joint 16 Petitioners' position We're not 17 interested in getting double paid for 18 services we provided I'm fairly sure the 19 Joint Petitioners are also not interested 20 in getting double billed for services 21 provided I think our issue in dispute is 22 that the language that's been offered is 23 vague and unclear and we just would like 24 to have something that's a little more 25 clear</p>
<p style="text-align: right;">Page 215</p> <p>1 A I believe if we get involved with some 2 fairly sensitive proceedings and establish 3 the cost basis for collocation, discuss 4 it, debate it, and I believe the 5 commissioners then set the rates for 6 collocation costs, collocation rates, 7 which -- so that's probably the general 8 process that's followed 9 Q Can collocation rates have two components, 10 a non-recurring rate and a recurring rate? 11 A It could, yes 12 Q What would a non-recurring rate -- how 13 would that operate? 14 A Well, I mean, I'm speculating just from my 15 knowledge of non-recurring rates in 16 general Non-recurring rates typically 17 are charges for things that happen one 18 time at the initiation of service 19 Q And then how would a recurring rate be 20 imposed? 21 A We would -- recurring rate is for ongoing 22 costs that occur month to month or on some 23 sort of a periodic basis and then we bill 24 based on those recurring costs for that 25 recurring rate And they tend to go for</p>	<p style="text-align: right;">Page 217</p> <p>1 Q Are you familiar with the rate structures 2 imposed by the state commissions in 3 BellSouth's region? 4 A I have very limited knowledge of the rate 5 structures that are imposed 6 Q Do you have any knowledge as to whether 7 those rate structures have been changed in 8 their composition over the last four 9 years? 10 A I can almost guarantee, because of their 11 complexity, that they have changed at 12 least somewhere in the past, over the last 13 four years 14 Q Are you aware that in some states what 15 used to be imposed as an NRC with regard 16 to collocation for one reason or another 17 was converted into a recurring cost that 18 would be recovered over time via monthly 19 or ongoing payments by a CLP? Are you 20 aware of that situation? 21 A I've had that explained to me, yes 22 Q And do you understand that some CLPs had 23 actually been in service and had 24 collocation based under the former regime 25 where specific costs were passed through</p>

<p style="text-align: right;">Page 218</p> <p>1 to the CLP via the imposition of a 2 non-recurring cost? 3 A I believe that's very possible. I'm not 4 aware of any specific examples of that. 5 Q Do you believe it's possible that there 6 are CLPs that have paid those 7 non-recurring costs? 8 A Yes. 9 Q What then would be the result if a CLP had 10 paid the non-recurring cost and then a 11 state commission changed the rate 12 structure such that the recurring costs 13 were created to recover the same costs 14 that initially were recovered in the 15 non-recurring charge? 16 A Well, I would hope that if a state 17 commission changed the rules or the rate 18 structures in that way, they would be 19 insightful enough to give instruction on 20 how to handle the transition. 21 Absent that, I would hope that we 22 would be able to negotiate how to handle 23 that transition. Again, our position is 24 we're not interested in having the CLPs 25 double pay for services. If they're</p>	<p style="text-align: right;">Page 220</p> <p>1 quote, unquote, grandfathered or 2 essentially kind of the same terms and 3 conditions that were available at the time 4 of the previous agreement are carried 5 forward through the current agreement. 6 Q Could that be restated that a CLP would 7 pay a rate other than what would currently 8 be in place at the time? 9 A If there's not a corresponding law or rule 10 or requirement that would force them to do 11 that and both parties were amenable to it, 12 then that could mean that, yes. 13 Q Regardless of what the law was -- 14 A Uh-huh. 15 Q -- just the operation to grandfather a 16 rate -- 17 A Uh-huh. 18 Q -- I just want to make sure we're both 19 speaking about the same thing. 20 A Certainly. 21 Q It would involve a CLP paying a rate that 22 is something other than what is then in 23 effect? 24 A It could very well mean that. In essence, 25 I don't usually see grandfathered rates in</p>
<p style="text-align: right;">Page 219</p> <p>1 already paid, even if they're 2 non-recurring or other methods or other 3 procedures already paid and -- we're not 4 interested in having them double pay. I 5 think the issue is how do we make that 6 actually happen as opposed to just talk 7 about the fact that none of us want that 8 to happen. 9 Q You're familiar with the word 10 grandfathered? 11 A I'm familiar with it from other contract 12 language that I've done in the past. 13 Q What's your understanding of what 14 grandfathered means? 15 A A grandfathered rate -- as I've used it in 16 the past, a grandfathered term would be a 17 term that has a new interconnection 18 agreement or a new commercial agreement, 19 whatever the case would be, and there's no 20 corresponding term associated with that 21 either term or rate in the old agreement, 22 but that because it was available then and 23 there's an agreement between the two to 24 continue to have -- two parties to 25 continue to have it available, it is.</p>	<p style="text-align: right;">Page 221</p> <p>1 contracts that I've worked on. There's 2 typically grandfathered terms where a 3 particular service we're offering was 4 offered in a certain way or a 5 configuration, we continue to offer that 6 configuration. He would know our current 7 products and services don't come in the 8 same configuration any more. That's simply 9 because some customers simply like to buy 10 the stuff they've been buying all along. 11 The rates themselves typically have to be 12 adjusted because, over time, changes 13 happen. There's an increase in costs due 14 to inflation. There's sometimes 15 decreasing cost due to improvements in 16 technology. Those have to be accounted 17 for, and those often effect the rates. If 18 there is a grandfathered rate, it would 19 probably have to be reviewed as to whether 20 it was -- whether both parties would find 21 it agreeable and acceptable and allow it 22 to continue. 23 Q If a rate that is in effect today would, 24 in effect, require a CLP to pay again for 25 something it already paid for, would</p>

<p style="text-align: right;">Page 222</p> <p>1 grandfathered be appropriate in that 2 instance? 3 A Grandfather could be one way to 4 potentially resolve that. Providing a 5 credit would be another way to potentially 6 resolve that. Again, it would be nice if 7 the Commission, when they change the 8 approaches, would actually provide 9 guidance as to how to handle the 10 transitions other than that they leave it 11 up to us. It's being creative and finding 12 a solution that both parties can agree to. 13 Q If indeed the rate was grandfathered to 14 avoid the double rate position, the 15 purpose for grandfathered would be what, 16 in your opinion? 17 A Well, you could use grandfathered to avoid 18 double payment. I don't know what other 19 complexities that creates that might make 20 that untenable. One would be trying to 21 keep duplicate rate structures into the 22 old billing one -- the old one and the new 23 one, and billing systems don't like that. 24 Another approach would be more applicable 25 or easier to implement for either</p>	<p style="text-align: right;">Page 224</p> <p>1 agreement, there are probably a subset of 2 those that were in the prior agreement. 3 And those are the ones that could 4 potentially still apply and be, quote, 5 unquote, grandfathered. The rates in the 6 prior agreement that has expired, it's no 7 longer valid and there will need to be 8 some comments or some agreement that those 9 rates are still valid in this sort of a 10 grandfathered way. 11 Q Would a permissible exception to 12 grandfathered rates be to avoid double 13 payment? 14 A I don't think I agree with your statement 15 in that I think you could use 16 grandfathered rates. You could 17 specifically allow for grandfathered rates 18 in this agreement to avoid double 19 payments. You specifically state these 20 rates are being grandfathered to avoid 21 double payments. I don't believe we would 22 just automatically grandfather something 23 without some sort of a written agreement 24 to do so. 25 Q But would the avoidance of double payment</p>
<p style="text-align: right;">Page 223</p> <p>1 BellSouth or the CLP 2 Q At page 38 of your testimony, lines 12 to 3 15, you say, when rates have been 4 grandfathered, the rates that would apply 5 are those that were, in fact, prior to the 6 effective date of this agreement or as 7 otherwise specified within this 8 agreement. There should be no other 9 exceptions allowed for the application of 10 grandfathered rates. So what do you 11 mean? Do you allow for an exception to 12 grandfather rates? 13 A Well, I guess I'm not sure where you're 14 asking about applying an exception in 15 terms of the -- maybe you could rephrase 16 your question for me. 17 Q What would be the exception to 18 grandfathered rates you would find 19 acceptable? 20 A I mean, as I say here, I mean, there's -- 21 essentially there are rates that are in 22 this agreement and there are rates that 23 are not in this agreement. That's pretty 24 much the entire universal rates that are 25 out there. And those that are not in this</p>	<p style="text-align: right;">Page 225</p> <p>1 be a permissible exception to 2 grandfathered rates? 3 A I guess I'm not understanding your 4 question in that if we wanted to use 5 grandfathered rates, then we would specify 6 them within this agreement so then it 7 would not fall into the other exceptions. 8 I mean, if we -- maybe I'm not 9 understanding your question, but when I 10 state that there are no other exceptions 11 allowed for application of grandfathered 12 rates, it's just simply trying to say you 13 can't go pick an interconnection agreement 14 off the shelf that's six years old and 15 say, I like this rate because it's 16 grandfathered and make it so. That we 17 need to -- if we're going to use 18 grandfathered as a technique in any kind 19 of rate approach, that we need to specify 20 how we're doing it, why we're doing it. 21 Q I understand what you said, but I'm not 22 certain it responds to my question. 23 A Okay. 24 Q Would one permissible exception to 25 grandfathered rates be to avoid double</p>

<p style="text-align: right;">Page 226</p> <p>1 payment?</p> <p>2 A I'm --</p> <p>3 Q Let me rephrase</p> <p>4 A I apologize I'm clearly not</p> <p>5 understanding your question</p> <p>6 Q If a grandfathered rate would result in a</p> <p>7 double payment situation --</p> <p>8 A Yes</p> <p>9 Q -- should an exception be made?</p> <p>10 A I believe we should find some method --</p> <p>11 some other method to avoid the double</p> <p>12 payment, whatever the case would be</p> <p>13 Q Should another rate be chosen?</p> <p>14 A Another rate could be chosen, chose not to</p> <p>15 grandfather Gosh, a credit could be</p> <p>16 applied I mean, there's lots of options</p> <p>17 that are out there</p> <p>18 Q Okay At page 39 --</p> <p>19 A It's unfortunate because these things get</p> <p>20 so caught up in the vernacular And</p> <p>21 there's so many things that we can sit</p> <p>22 down and work together and get creative</p> <p>23 and probably resolve this issue</p> <p>24 Q I'm not feeling very creative right now</p> <p>25 Page 39 of your testimony At</p>	<p style="text-align: right;">Page 228</p> <p>1 language is just simply the way any two</p> <p>2 companies, when they have a dispute about</p> <p>3 how much someone's paid and what they</p> <p>4 still owe, resolves that One company</p> <p>5 says, oh, okay, I'm sorry I don't want</p> <p>6 to double bill you Could you please</p> <p>7 provide me some documentation? And then</p> <p>8 you sit down and you sort it out And</p> <p>9 that's pretty much what we're trying to do</p> <p>10 here</p> <p>11 Q Do you know whether the Joint Petitioners</p> <p>12 in this case have already provided that</p> <p>13 kind of documentation to BellSouth?</p> <p>14 A I don't know</p> <p>15 Q What would you expect BellSouth to do when</p> <p>16 it received that information from the</p> <p>17 Joint Petitioners?</p> <p>18 A I think we'd investigate our records to</p> <p>19 see if we concur with their assessment of</p> <p>20 what they have paid on a recurring basis</p> <p>21 and non-recurring basis And once we've</p> <p>22 determined our assessment of that, we</p> <p>23 would then sit down with a number of folks</p> <p>24 to determine the proper approach, what</p> <p>25 would be the right way to resolve this to</p>
<p style="text-align: right;">Page 227</p> <p>1 lines 17 to 22 This testimony states</p> <p>2 that if the Joint Petitioners provide</p> <p>3 BellSouth with documentation proving that</p> <p>4 they have been paid in full -- strike</p> <p>5 that -- that they have paid in full all of</p> <p>6 the individual case basis or non-recurring</p> <p>7 charges associated with the installation</p> <p>8 of preparation activities performed and</p> <p>9 billed by BellSouth for a particular</p> <p>10 collocation arrangement, then no</p> <p>11 additional installation or preparation</p> <p>12 fees will be billed for those collocation</p> <p>13 arrangements</p> <p>14 A Yes</p> <p>15 Q And that's your position of how the rates</p> <p>16 for collocation should work in this</p> <p>17 agreement?</p> <p>18 A Yes</p> <p>19 Q And can you direct me to the portion of</p> <p>20 Attachment 4 that would permit the Joint</p> <p>21 Petitioners to make this presentation to</p> <p>22 BellSouth?</p> <p>23 A No I mean, I probably could read</p> <p>24 Attachment 4 I may find something in</p> <p>25 there that helps in that area This</p>	<p style="text-align: right;">Page 229</p> <p>1 help clinch the void, Joint Petitioners</p> <p>2 avoid double paying It could be a</p> <p>3 credit Like I said, it could be any</p> <p>4 number of things Probably a very</p> <p>5 creative session to think of alternatives</p> <p>6 Q How long do you think it would take to</p> <p>7 reach a resolution regarding that matter?</p> <p>8 A It would depend on the complexity of how</p> <p>9 many -- how detailed the records were,</p> <p>10 how many of the records there were If</p> <p>11 there's only one or two, it could be</p> <p>12 relatively quick If there were hundreds</p> <p>13 or thousands, it could take relatively --</p> <p>14 take longer So it would just depend how</p> <p>15 much is involved to do it</p> <p>16 Q What if the Joint Petitioners provided</p> <p>17 documentation that they had paid 50</p> <p>18 percent of all of the individual case</p> <p>19 basis or non-recurring charges, what</p> <p>20 should be the result then?</p> <p>21 A I think we'd have to review that on an</p> <p>22 individual basis I mean, we'd have to</p> <p>23 look at whether they had paid, what they</p> <p>24 still owe, determine what's being</p> <p>25 recovered by the current rates versus what</p>

<p style="text-align: right;">Page 230</p> <p>1 has been -- had been recovered by 2 previous rates and figure out what, in 3 BellSouth's mind, is a fair resolution so 4 the CLPs do not double pay for services 5 Q Would a fair resolution perhaps be that 6 they paid the other 50 percent of the 7 non-recurring or individual case-based 8 charges? 9 A Yes I would venture to say if they only 10 paid 50 percent, it's probably on 50 11 percent of the locations, so we might have 12 different rates that we'd apply for 13 different locations. It would just depend 14 on the nature of how much they had paid 15 and in what way they had paid. 16 Q So would the resolution depend on whether 17 the rates for collocation had changed from 18 the time the original NRCs or individual 19 case basis charges were imposed until the 20 present? 21 A I think that would be one of the 22 components that would have to be 23 evaluated. 24 Q And if the rates at present were higher 25 than the rates that were in effect when</p>	<p style="text-align: right;">Page 232</p> <p>1 Q Is it your position that the rates that 2 were in effect at the time the NRC was 3 imposed should govern the question of how 4 much additional should be paid? 5 A If -- I think the rates that were in 6 effect at any given time should govern how 7 much is owed for that given time. Prices 8 change all the time. It would be no 9 different than if you brought a car, took 10 out a loan for a car and then came back 11 three months later and said, my car is not 12 worth as much, therefore, I don't owe you 13 as much. You don't have the opportunity 14 to do that. There was a rate at the time 15 you made the purchase, and that's what's 16 owed. So it's just -- I think that's -- 17 the rate at the time should govern what's 18 owed for that particular service at that 19 particular time. 20 Q Would that apply regardless of whether the 21 rate then applicable is lower than the 22 rate typically applicable? 23 A Yes. 24 Q On page 40 of your testimony, beginning at 25 line 8. You state that BellSouth has</p>
<p style="text-align: right;">Page 231</p> <p>1 the NRC or ICB price was imposed, what 2 would the proper results be? 3 A I believe we'd have to go through and 4 determine what the rate was at the 5 applicable times of the agreements to 6 determine what is owed for those 7 appropriate times. I've been involved in 8 working on that with other customers where, 9 prices would go up and down and we'd have 10 six months at one price, six months at a 11 second price, another six months at a 12 third price. I mean, it's an Excel 13 spreadsheet. It's math exercise, but you 14 work through what's there and you do it in 15 an open and equitable manner. You share 16 the information back and forth between 17 yourself and your customer and you solve 18 out the issue and come up to as much as 19 possible. 20 I have found in every case, 21 though, the way to resolve this detail, 22 get the individual records available. 23 Both parties agree on the records. They 24 agree on what's at issue, and then they 25 determine the appropriate resolution.</p>	<p style="text-align: right;">Page 233</p> <p>1 proposed specific language in section 2 8.11.1 that would discuss how BellSouth 3 would assess grandfathered DC power 4 charges. Do you see that? 5 A Yes, I do. 6 Q Could you please return to Exhibit 9? 7 Look at the page numbered 45 at the top. 8 And do you see where it says BellSouth 9 version? 10 A Yes. 11 Q And that this is BellSouth's version of 12 8.11.1? 13 A Yes. 14 Q That language begins in Tennessee. Do you 15 see that? 16 A Yes. 17 Q Do you know what the significance is of 18 this section beginning with the words in 19 Tennessee? 20 A Tennessee is the only state where 21 BellSouth is currently offering a fused 22 amped billing option for DC power. 23 Q So this section would not apply in any 24 other BellSouth state? 25 A Yes.</p>

<p style="text-align: right;">Page 234</p> <p>1 Q So then to revisit your testimony 2 BellSouth has, in fact, proposed language 3 to govern grandfathering of DC power rates 4 in Tennessee, is that correct? 5 A I mean, the issue of Tennessee is there 6 are used amp and fused amp billing options 7 in Tennessee. So, yes, we have proposed 8 111 grandfathered rights for how we 9 handle Tennessee 10 Q Have you proposed language to govern 11 grandfathering of DC power rates for any 12 other state? 13 A Not that I'm aware of 14 Q Could a CLP use or draw power if its power 15 cabling were not installed? 16 A Not that I'm aware of, no. It would be 17 neat if we could find a way though 18 Q What in your mind would be an 19 appropriate -- strike that 20 Is it your position that CLPs 21 should pay recurring charges for power if 22 they cannot use that power? 23 A It would depend on the reasons for not 24 being able to use that power. If a CLP 25 has ordered power from BellSouth and we</p>	<p style="text-align: right;">Page 236</p> <p>1 A It's going to vary greatly depending on 2 how much power is needed and what level of 3 equipment is necessary to make that 4 happen. In order to power our electric 5 equipment the same, whether it's BellSouth 6 equipment or CLEC equipment, we have to 7 bring electrical feed in from the electric 8 utility. We then condition and support 9 that with a standby generator. We then 10 feed that through an AC to DC converter to 11 make that into DC power. We support that 12 DC power plant with strings of batteries, 13 that's the end cable and distribute it 14 throughout the office at various voltage 15 levels to distribution ports, frames, et 16 cetera. Then it's also cabled to either 17 BellSouth's equipment or to CLEC 18 collocated equipment for them to connect 19 to. So we've -- that's going to vary. In 20 some cases, it may be as simple as 21 connecting a power cable from a BDFB to 22 the collocations's space. In other cases 23 the requested power need for the CLP may 24 be more than we have available, so we have 25 to invest in putting a new DC power plant</p>
<p style="text-align: right;">Page 235</p> <p>1 have configured and made it available, 2 ready, and turned it over to them, then 3 they have simply not done their own wiring 4 of the cable and we've dedicated a 5 considerable amount of assets and a 6 considerable amount of resources as well 7 as having a portion of our BDFB dedicated 8 to them and it's simply waiting for them, 9 so at that -- in that case, they should 10 definitely pay. If for some reason we're 11 the cause for them not being able to use 12 the power because we're late or something 13 like that, then they should not. It just 14 depends on the cause. 15 Q But in either event, would the CLP be 16 actually drawing power, is that correct? 17 A That is correct. 18 Q On page 42 of your testimony, you state 19 that BellSouth would have made an 20 investment in infrastructure that is 21 necessary to convert commercial AC 22 electricity to DC power. Do you see that? 23 A Yes. 24 Q Can you tell me what the financial cost of 25 that investment would be?</p>	<p style="text-align: right;">Page 237</p> <p>1 in there. In some cases the requested 2 power load may actually be more than our 3 standby AC generators are rated to carry, 4 so we have to put an entire new standby AC 5 power generator. And in the most extreme 6 cases, it may be more than our electrical 7 feed that we get from our utilities, so we 8 may have to request an additional 9 electrical feed from the utilities. All 10 of those things are possible and could be 11 triggered by any increase in power 12 requirements in the central office 13 location, whether it be from BellSouth 14 equipment or a collocated CLP. 15 Q And the cost that you've just outlined for 16 me, would they be recovered from a CLP in 17 a non-recurring charge? 18 A They could be or it could also be covered 19 in a recurring charge. 20 Q And do you know how -- over what period 21 of time the recurring charge is geared in 22 order to fully recover the cost of that 23 initial investment that you described? 24 A I don't know. 25 Q You don't know if it would take a year for</p>

<p style="text-align: right;">Page 238</p> <p>1 BellSouth to recoup its investment?</p> <p>2 A I'm not familiar with the cost of these</p> <p>3 that have been developed, the rates in the</p> <p>4 DC power side</p> <p>5 Q Do you know whether cost studies have been</p> <p>6 developed?</p> <p>7 A I believe they have been, yes</p> <p>8 Q Please turn to page 50 of your testimony</p> <p>9 And at lines 11 through 14, you state that</p> <p>10 after you reviewed section 9.1.1 of</p> <p>11 Attachment 4, you've determined that the</p> <p>12 last sentence of something needs to be</p> <p>13 stricken in its entirety. The last</p> <p>14 sentence of what?</p> <p>15 A I believe it's the last sentence of</p> <p>16 section 9.1.1</p> <p>17 Q All right. That appears at page 46 of</p> <p>18 Exhibit 9, if you want to take a look at</p> <p>19 it. Which sentence should be stricken?</p> <p>20 A I believe the last one. It's read as</p> <p>21 non-recurring charges for 48-volt DC power</p> <p>22 distribution will be based on the costs</p> <p>23 associated with collocation power plant</p> <p>24 investment and the associated</p> <p>25 infrastructure</p>	<p style="text-align: right;">Page 240</p> <p>1 not be done that way, is that correct?</p> <p>2 A I believe some of the commissions and our</p> <p>3 position, we only have recurring rates</p> <p>4 with power. I believe that is the case in</p> <p>5 Tennessee, but I'm not positive as to</p> <p>6 whether or not we have limited</p> <p>7 non-recurring rate. But as in the</p> <p>8 agreement, you can determine compensation</p> <p>9 for costs whether through not occurring or</p> <p>10 recurring rates</p> <p>11 Q On page 45 of your testimony, if you could</p> <p>12 please turn to that page. Make the</p> <p>13 statement in lines 1 to 3 that when</p> <p>14 BellSouth provisions the collocation space</p> <p>15 in accordance with the CLP's</p> <p>16 specifications, it should be compensated</p> <p>17 when the space is turned over to the CLP</p> <p>18 for its use</p> <p>19 A That is correct</p> <p>20 Q Is it your position that it is only</p> <p>21 through the imposition of recurring costs</p> <p>22 for DC power that BellSouth would be</p> <p>23 compensated when the collocation space is</p> <p>24 turned over to the CLP?</p> <p>25 MR CULPEPPER. Object to the form</p>
<p style="text-align: right;">Page 239</p> <p>1 Q Now, can you please look at section 9.1.2,</p> <p>2 which is on the next -- goes onto the</p> <p>3 next page</p> <p>4 A Okay</p> <p>5 Q Would that sentence regarding</p> <p>6 non-recurring charges also need to be</p> <p>7 stricken?</p> <p>8 A I don't know, to tell you the truth</p> <p>9 Q The BellSouth language that we are</p> <p>10 reviewing begins, again, with the words</p> <p>11 Tennessee. Do you see that?</p> <p>12 A That's correct</p> <p>13 Q In Tennessee, would it be appropriate for</p> <p>14 BellSouth to charge non-recurring charges?</p> <p>15 A I don't know what rate structure has been</p> <p>16 established by Tennessee Regulatory</p> <p>17 Authority, if they include non-recurring</p> <p>18 charges or not</p> <p>19 Q All right. So I believe you testified</p> <p>20 that the initial investment that BellSouth</p> <p>21 makes to create power infrastructure in a</p> <p>22 collocation could be recovered through</p> <p>23 non-recurring rates?</p> <p>24 A It could be, yes</p> <p>25 Q But it's your position now that it shall</p>	<p style="text-align: right;">Page 241</p> <p>1 of the question</p> <p>2 A This particular issue has to do with the</p> <p>3 commencement of DC power billing. I don't</p> <p>4 think it speaks nor am I trying to speak</p> <p>5 to other compensation for collocation</p> <p>6 space that might also be involved, so</p> <p>7 Q So would you expect that BellSouth could</p> <p>8 have received compensation in a better</p> <p>9 form from the CLP when space is turned</p> <p>10 over?</p> <p>11 A I believe there's probably compensation</p> <p>12 for the actual collocation space. I'm not</p> <p>13 familiar with what rates they would be or</p> <p>14 how they would be assessed</p> <p>15 Q At page 46 of your testimony, you discuss</p> <p>16 an order of the Florida Public Service</p> <p>17 Commission</p> <p>18 A Yes</p> <p>19 Q And at lines 13 and 14, it states that</p> <p>20 billing of monthly recurring charges</p> <p>21 should begin in the next billing cycle</p> <p>22 A Yes</p> <p>23 Q Do you see that?</p> <p>24 A Yes. This was in direct quotes from the</p> <p>25 Florida Public Service Commission</p>

<p style="text-align: right;">Page 242</p> <p>1 Q Yes, it appears --</p> <p>2 A Okay</p> <p>3 Q -- at line 14 on page 46</p> <p>4 A Yes</p> <p>5 Q All right I'm handing you a document</p> <p>6 that I've marked Exhibit 14</p> <p>7 (DEPOSITION EXHIBIT NO 14 WAS MARKED)</p> <p>8 Q Do you recognize this document, Mr. Fogle?</p> <p>9 A No, I do not</p> <p>10 Q I invite you to look at the date that's</p> <p>11 been date stamped on the bottom of the</p> <p>12 front page</p> <p>13 A This is November 26th, 2003?</p> <p>14 Q And the top of the page before the Florida</p> <p>15 Public Service Commission?</p> <p>16 A Yes</p> <p>17 Q And on the Exhibit 14 it lists Docket</p> <p>18 981834-TP?</p> <p>19 A Yes</p> <p>20 Q And I invite you to look back at your cite</p> <p>21 to the Florida Commission Order discussed</p> <p>22 at page 46 in your testimony</p> <p>23 A Yes</p> <p>24 Q Could you accept that this is the order</p> <p>25 that you were quoting from?</p>	<p style="text-align: right;">Page 244</p> <p>1 form of the question</p> <p>2 A I don't know if this was stipulated before</p> <p>3 they had a chance to review it or if it</p> <p>4 was stipulated during or after So I</p> <p>5 don't know what the particular commissions</p> <p>6 -- I do know if it's stipulated language</p> <p>7 at least the CLECs and BellSouth agree to</p> <p>8 it</p> <p>9 Q And can you tell me on pages 5 to 6, which</p> <p>10 is the language that you referred to on</p> <p>11 page 46 of your testimony, does that</p> <p>12 discuss recurring charges for power</p> <p>13 specifically?</p> <p>14 A I don't see any mention in here to power</p> <p>15 rates</p> <p>16 Q Is it your position that the stipulation</p> <p>17 that appears in the Florida Commission</p> <p>18 order should apply in other BellSouth</p> <p>19 states?</p> <p>20 A No, I think it should apply in Florida</p> <p>21 MS JOYCE All right We've been</p> <p>22 going quite awhile I think we should</p> <p>23 break for about ten minutes Go off the</p> <p>24 record</p> <p>25 (RECESS)</p>
<p style="text-align: right;">Page 243</p> <p>1 A Yes</p> <p>2 Q All right Now, look at page 5, please,</p> <p>3 of Exhibit 14 Page numbers are marked in</p> <p>4 the top left-hand corner</p> <p>5 A Okay That's convenient</p> <p>6 Q And the language on Exhibit 14, page 5,</p> <p>7 that has the heading stipulated language,</p> <p>8 do you see that?</p> <p>9 A Yes, I do</p> <p>10 Q Is that the same language that you're</p> <p>11 quoting at page 46 of your testimony?</p> <p>12 A Yes</p> <p>13 Q Do you know what it means when parties</p> <p>14 stipulate to language?</p> <p>15 A I believe it's a fancy term for agree</p> <p>16 Q So is the language quoted at page 5 --</p> <p>17 from page 5 of Exhibit 14 the</p> <p>18 representation of an agreement?</p> <p>19 A Yes</p> <p>20 Q Is it your position that the language that</p> <p>21 appears on page 5 is the product of the</p> <p>22 Florida Commission's review of the issue</p> <p>23 as to when should billing of monthly</p> <p>24 recurring charges begin?</p> <p>25 MR CULPEPPER I object to the</p>	<p style="text-align: right;">Page 245</p> <p>1 BY MS JOYCE</p> <p>2 Q Mr. Fogle, you have not provided any</p> <p>3 testimony with regard to Issue 46, is that</p> <p>4 correct?</p> <p>5 A I don't remember which issue 46 was</p> <p>6 Q If you look on page 46 to 47, that is the</p> <p>7 end of Issue 44</p> <p>8 A Yeah</p> <p>9 Q Do you see that?</p> <p>10 A It appears I did not offer any testimony</p> <p>11 on Issue 46</p> <p>12 Q And why didn't you offer any testimony?</p> <p>13 A I don't even know what Issue 46 was, to</p> <p>14 tell you the truth I don't remember I</p> <p>15 should say I don't recall But I imagine</p> <p>16 there's another witness that we determined</p> <p>17 was probably more qualified to provide a</p> <p>18 response to that particular issue, if it's</p> <p>19 still an issue in this proceeding</p> <p>20 Q The Joint Petitioners' statement with</p> <p>21 respect to Issue 46 was what rates should</p> <p>22 apply for BellSouth supplying DC power</p> <p>23 A Okay</p> <p>24 Q I'm going to show you a document that I've</p> <p>25 marked Exhibit 15</p>

<p style="text-align: right;">Page 246</p> <p>1 (DEPOSITION EXHIBIT NO 15 WAS MARKED)</p> <p>2 A Okay</p> <p>3 Q Have you seen this document before, the</p> <p>4 front page of it, any way?</p> <p>5 A Yes I may have or may not have seen this</p> <p>6 particular document I've seen some</p> <p>7 direct testimony of Kathy Blake associated</p> <p>8 with these arbitrations, but I don't know</p> <p>9 if I've seen this particular North</p> <p>10 Carolina version of this testimony</p> <p>11 Q Do you see the header on page 1?</p> <p>12 A Yes</p> <p>13 Q States she's testifying --</p> <p>14 A Uh-huh</p> <p>15 Q -- in these same dockets in this case?</p> <p>16 A Yes</p> <p>17 Q Okay If you'd turn the page It's</p> <p>18 actually page 3 I was trying to</p> <p>19 economize, but Ms Blake States at line 13</p> <p>20 on page 3 that 46 is a resolved issue Do</p> <p>21 you see that?</p> <p>22 A Yes, I do</p> <p>23 Q Do you have an understanding as to whether</p> <p>24 Issue 46 is resolved?</p> <p>25 A I would sure hope so, if she's testifying</p>	<p style="text-align: right;">Page 248</p> <p>1 are at issue and Issue 46?</p> <p>2 A I don't know, to tell you the truth, what</p> <p>3 sections are at issue It does appear</p> <p>4 these relate to DC power, which I think is</p> <p>5 the issue There may be other sections</p> <p>6 Q Well, given that thus far we've been</p> <p>7 talking about collocation, can you please</p> <p>8 look at section 8 11, the BellSouth</p> <p>9 version, and explain to me what the</p> <p>10 language that is bolded means which</p> <p>11 states, recurring charges for negative</p> <p>12 48-volt DC power will be assessed per amp</p> <p>13 per month based upon the BellSouth's</p> <p>14 certified supplier engineered and</p> <p>15 installed power feed fused ampere</p> <p>16 capacity</p> <p>17 A Your question was asking me to explain the</p> <p>18 bolded language?</p> <p>19 Q What does that mean?</p> <p>20 A What does that mean? It means that the</p> <p>21 monthly recurring charges that BellSouth</p> <p>22 would be charging the CLP for DC power, in</p> <p>23 this case specifically minus 48-volt DC</p> <p>24 power, would be set based on their</p> <p>25 engineered and installed fused amp</p>
<p style="text-align: right;">Page 247</p> <p>1 it is</p> <p>2 Q Would you be surprised that Joint</p> <p>3 Petitioners' position is that 46 has not</p> <p>4 been resolved?</p> <p>5 A No, I'm not surprised</p> <p>6 Q Did you review Joint Petitioners'</p> <p>7 testimony, the written testimony with</p> <p>8 respect to Issue 46 when you prepared your</p> <p>9 testimony in this case?</p> <p>10 A I did, but it's been quite awhile since I</p> <p>11 did that</p> <p>12 Q All right Can you please look at Exhibit</p> <p>13 9 Do you have a position as to what</p> <p>14 rates should apply to DC power in this</p> <p>15 interconnection agreement?</p> <p>16 A I haven't Since I was under the</p> <p>17 presumption that 46 was closed or</p> <p>18 resolved, I haven't developed a position</p> <p>19 on that one issue in particular</p> <p>20 Q All right Well, if I could direct your</p> <p>21 attention to page 44 Again, numbers are</p> <p>22 on the top right</p> <p>23 A Okay, I'm there</p> <p>24 Q Would you except that sections 8 11 --</p> <p>25 8 11 1 and 8 11 2 are the sections that</p>	<p style="text-align: right;">Page 249</p> <p>1 capacity And that comes back to what the</p> <p>2 CLP would request and that we would</p> <p>3 engineer and install in terms of how much</p> <p>4 fused amp capacity they would request</p> <p>5 Q So, again, to be clear --</p> <p>6 A Uh-huh</p> <p>7 Q -- the clause engineered and installed</p> <p>8 power feed fused ampere capacity relates</p> <p>9 to the power capacity for negative 48-volt</p> <p>10 DC power that the CLP requests to be</p> <p>11 installed in its collocation space?</p> <p>12 A I believe it's probably to their</p> <p>13 collocation space, but, yes, an example</p> <p>14 would be if a CLP ordered a hundred</p> <p>15 amperes of minus 48-volt DC power, that we</p> <p>16 would engineer a hundred ampere DC power</p> <p>17 feed and then we would install and fuse</p> <p>18 that specific ampere capacity to that CLEC</p> <p>19 collocation space</p> <p>20 Q What does it mean to engineer 4?</p> <p>21 A As it comes about, I mean, we have power</p> <p>22 engineers who have a responsibility to</p> <p>23 determine what is the best method for</p> <p>24 delivering the requested ampere load that</p> <p>25 they've asked for the DC feed So they'll</p>

<p style="text-align: right;">Page 250</p> <p>1 determine where to run the cables, what DC 2 power plants they need to come from, 3 determine, you know, a number of different 4 technical parameters associated with that 5 feed to make sure that it's appropriate 6 and accurate and that it will be provided 7 reliably. And then they provide those 8 engineering documents off to the installer 9 who then goes and installs that same power 10 feed. 11 Q So would another word for engineered in 12 this context be planned? 13 A Both planned, but also designed. 14 Q But engineered and installed are two 15 separate acts? 16 A Yes. 17 Q To your knowledge, does this language in 18 the BellSouth proposed version of this 19 section reflect the order of any state 20 commission with respect to how BellSouth 21 should impose recurring charges? 22 A I believe reflecting the methodology that 23 is currently in effect in North Carolina, 24 which is a fused amp methodology for 25 recurring rates.</p>	<p style="text-align: right;">Page 252</p> <p>1 A Yes. 2 Q But the language in the next sentence that 3 begins in Tennessee would apply only in 4 Tennessee? 5 A Yes. 6 (DEPOSITION EXHIBIT NO 16 WAS MARKED) 7 Q Mr. Fogle, I'm handing you a document 8 marked Exhibit 16. Do you recognize this 9 document? 10 A No, I do not. 11 Q I direct your attention to your testimony, 12 which is Exhibit 2, at page 51. Again, 13 page 51, lines -- 14 A 51 of -- page 51 of my testimony? 15 Q Of your testimony. And do you see at 16 lines 13 and 14 you state that this 17 Commission has already approved the fused 18 amp billing methodology in the NC 19 collocation order? 20 A Yes. 21 Q Is the document that I've handed you 22 marked Exhibit 16 that order? 23 A Yes, I believe that it is. 24 Q Please turn to the last page of Exhibit 25 16. And this is a portion of that order.</p>
<p style="text-align: right;">Page 251</p> <p>1 MR. CULPEPPER: And we're looking 2 at 811, right? 3 MS. JOYCE: Yes. 4 Q Would this proposed language apply in all 5 nine BellSouth states? 6 A The bolded language would only apply in 7 those states where they continue to use 8 the fused amp capacity. 9 The very next sentence starts off 10 with the two words in Tennessee, because 11 Tennessee has a used amp methodology for 12 appropriate -- for determining the rates, 13 what is billed for DC power. 14 Q I believe the language you're referring to 15 states that in Tennessee, applicable rates 16 shall vary depending on whether customer 17 elects to be billed on a fused amp basis? 18 A That is correct. 19 Q So does that indicate in Tennessee a CLP 20 can choose between fused amp recurring 21 power charges and used amp? 22 A Yes, they have their choice. 23 Q If a CLP chose to do fused amp billing in 24 Tennessee, would the bolded language that 25 we've been discussing apply?</p>	<p style="text-align: right;">Page 253</p> <p>1 It's over 270 pages long. But the last 2 page, which is marked No. 265, and do you 3 see it says Commission Conclusions Rate 4 Issue No. 4, DC power? 5 A Yes. 6 Q Is it from these conclusions that you 7 derive your understanding that you 8 testified to on page 51 in your testimony? 9 A I did not review this particular section 10 prior to my testimony, but had discussed 11 it with those who had reviewed this in 12 developing my reference to this particular 13 testimony. 14 Q Were the people you discussed it with 15 attorneys? 16 A No. 17 Q With whom did you discuss this order? 18 A Lynn Brewer. 19 Q I direct your attention to clause 4, the 20 very bottom of page 265 on this Exhibit 21 16. And it states that the Commission 22 finds it appropriate to require ILECs to 23 charge power costs on a per fused amp 24 basis. Do you see that? 25 A Yes, I do.</p>

<p style="text-align: right;">Page 254</p> <p>1 Q Is there anything in these clauses that 2 would preclude BellSouth from 3 providing -- strike that -- from charging 4 power based on a used amp basis? 5 MR CULPEPPER I object to the 6 form of the question 7 A In my reading of this for the first time, 8 I mean, it appears they're requiring us to 9 charge on a per fused amp basis It 10 doesn't give us any leeway to do any -- 11 apply any other method 12 Q Do you know on what grounds the North 13 Carolina Commission reached that 14 conclusion? 15 A No, I do not 16 Q Is it your testimony that the North 17 Carolina Commission rejected used amp 18 billing? 19 A I don't know whether they did or not 20 Q Please turn to the page marked 258 of 21 Exhibit 16 And this exhibit is double 22 side copied, so 23 A Okay I'm there 24 Q Please review the second full paragraph 25 that appears on that page</p>	<p style="text-align: right;">Page 256</p> <p>1 Dale Caldwell is the person, but I'm not 2 positive Dale 3 Q We understand that that is his name 4 A Her 5 Q Her 6 A I was going to tell you I know the name, 7 but I also did not know if it was a he or 8 a she, so 9 Q Not important 10 Would BellSouth, when it charges 11 CLPs in North Carolina on a fused amp 12 basis for power, would it always apply 13 this same factor? 14 A Could you repeat your question for me 15 again? 16 Q When BellSouth charges CLPs in North 17 Carolina on a fused amp basis for 18 collocation power, would it always use 19 this factor? 20 A I believe the answer to that would be yes, 21 with a couple of caveats In particular, 22 this is a design factor that we use for DC 23 power, so that the rated capacity and the 24 fused capacity, we need to account for the 25 fact that, you know, we -- just like in</p>
<p style="text-align: right;">Page 255</p> <p>1 (PAUSE) 2 A Okay 3 Q Are you finished? 4 A Yes 5 Q In this paragraph, what's being discussed 6 is a witness Caldwell, who appears to have 7 been a BellSouth witness, explained that 8 when fused amp billing is performed for 9 collocation power -- 10 A Yes 11 Q -- that a factor of 67 percent would be 12 assessed So that the monthly -- the 13 average monthly cost per kilowatt hour 14 would be multiplied by 67 percent And 15 according to witness Caldwell, that 16 operation would then ensure that the CLP 17 is not overcharged Do you see that? 18 A Yes, I do see that 19 Q Do you have any reason to doubt that 20 Witness Caldwell's math is correct in this 21 instance? 22 A I agree with the math 23 Q Do you know this person? 24 A I don't know if I have met this person 25 directly I think I know of them Lucy</p>	<p style="text-align: right;">Page 257</p> <p>1 your home circuit, if you need 5 amps of 2 power on a particular leg in your home, 3 you put in a 10 amp fuse or a 15 amp 4 fuse It's appropriate so that you're not 5 always tripping that fuse or that circuit 6 breaker 7 So there's this similar 8 overbuilding to allow for the peaks and 9 variations that goes on I would imagine 10 if our design parameters were -- became 11 more stringent or relaxed and changed from 12 the 65 percent identified here, we would 13 probably reflect that in our cost, which 14 would then be reflected in our rates 15 Q Do you know why Ms Caldwell would assert 16 to the North Carolina Commission that by 17 assigning this 67 percent factor to the 18 monthly cost would ensure that a CLP is 19 not overcharged? 20 A I can't speak to what she was thinking, 21 but I do know that if you have a 10 amp 22 fuse or 100 amp fuse or 200 amp fuse, the 23 rated power for that circuit is lower than 24 that And that's simply what is being 25 factored for here is that just because you</p>

<p style="text-align: right;">Page 258</p> <p>1 have 100 amp circuit does not mean you're 2 expecting to use 100 amps. You expect to 3 use 67 percent of that 100 amps. 4 Q Is there a risk of overcharging when DC 5 collocation power is billed on a DC basis? 6 A I guess it would depend on your definition 7 of what is an overcharge. 8 Q Is it possible a CLP would be charged for 9 more power than it actually used in a 10 given month? 11 A If a CLP ordered a hundred amp circuit but 12 only had a 10 amp drain so we were 13 charging them on a fused amp basis for 67 14 amps, then their -- fact that they 15 overdesigned their service or didn't 16 provide good engineering documents means 17 they would be buying more power than 18 they're using. 19 Q And you attribute that error to the CLP? 20 A If they requested a 67 amp feed, we did a 21 hundred fused amp and they only get 10, 22 then they obviously overrequested how much 23 power they needed. 24 Q Could it ever be the case that BellSouth 25 would require a CLP to order far more</p>	<p style="text-align: right;">Page 260</p> <p>1 A In DC power, it's appropriate to have a 2 rated load, which is the expected peak 3 load, and then you overbuild or provide a 4 fused amp capacity that is above that so 5 that you're not constantly tripping the 6 fuses. I mean, the purpose behind a fuse 7 in electrical circuit is protection of 8 both the equipment but also of the people 9 in the building. The idea is if the 10 equipment is starting to pull more 11 electricity than the fuse is designed to 12 pull, in other words, it starts pulling at 13 a hundred amps or higher, then the fuse is 14 designed to trip. Because the reason that 15 is happening is because the piece of 16 equipment has gone faulty. And so it's 17 important for the fuse to cut the power to 18 that piece of equipment because it's 19 obviously developed some sort of a short. 20 And so the engineering design parameters 21 are to design the fuse to be at this case, 22 one-and-a-half times the rated power of 23 the circuit so that it provides adequate 24 protection and safety for the employees, 25 the personnel in the building, as well as</p>
<p style="text-align: right;">Page 259</p> <p>1 fused amp capacity then it intended to 2 use? 3 MR. CULPEPPER: I'm going to 4 object to the form of the question. 5 A The only limitation I'm aware of is I 6 think we require a 10 amp minimum. 7 Q And I believe you stated that if a CLP had 8 a hundred fused amps provisioned to its 9 collocation facility, it would get charged 10 out at 67 amps? 11 A Yes. 12 Q Why? 13 A Well, sorry, I apologize, that's not 14 exactly clear. The price for the 100 amp 15 fused rate would take into account that 16 only 67 amps were expected to be used. 17 Q Why would 67 amps be expected to be used? 18 A Because that's the rated factor that we 19 use in our engineering guidelines. 20 Q 67 percent is a factor in your engineering 21 guidelines? 22 A It's a protection device adjustment 23 factor. I think is exactly what she calls 24 it. 25 Q Does it always apply?</p>	<p style="text-align: right;">Page 261</p> <p>1 the equipment, yet it still doesn't become 2 a nuisance and trip every time a 3 particular piece of equipment has a peak 4 load that gets close to that fused 5 capacity. 6 Q So BellSouth has their kind of technical 7 standard that it applies where the fused 8 amp capacity should be roughly a third 9 more than the CLP expects to use for 10 safety reasons? 11 MR. CULPEPPER: I object to the 12 form of the question. 13 A I don't believe it's specific to CLPs. I 14 think it's specific to DC power feeds and 15 how they're designed. 16 Q And does that policy reflect some kind of 17 publication by a panel of engineers or NEB 18 guidelines or anybody, NEBS? 19 A I don't know where it comes from. 20 Q So is it your understanding that this 21 guideline would apply in all BellSouth 22 states? 23 A There may be some local electrical code 24 guidelines that will also govern that. 25 It's been in my experience in the past</p>

<p style="text-align: right;">Page 262</p> <p>1 when I did power engineering work in 2 engineering management, those types of 3 thing in the power world, that there would 4 be general rules. But, obviously, there's 5 national electric code. There can also be 6 state electrical code rules as well as 7 local electrical code rules, and we have 8 to comply with all of those. So it's a 9 matter of what the local engineering 10 guidelines would be. My expectation is 11 this is probably the minimum conservative 12 view of all of those potential rules that 13 are out there. 14 Q What do you mean by "conservative"? 15 A It's probably -- and, again, I'm actually 16 speculating, which I probably shouldn't 17 do, but if there are some variations 18 locally, this may be the most conservative 19 of the variations, which benefits the CLEC 20 the most. 21 Q It requires the least amount of 22 overcapacity? 23 A That's correct. Actually, I apologize, 24 it's the opposite of that. This would 25 provide the maximum amount of capacity.</p>	<p style="text-align: right;">Page 264</p> <p>1 Q I ask you to pick up Exhibit 9 again. And 2 turn to page numbered 46. Provision 9.1.1 3 A Okay, I'm there. 4 Q And in the BellSouth version of this 5 language in bold appear the words based 6 upon the engineered and installed power 7 feed fused ampere capacity. Do you see 8 that? 9 A Yes. 10 Q Is that another way of saying based upon 11 the configuration ordered by the 12 Commission? 13 A No, I would not agree it's another way of 14 saying that it's based upon another 15 configuration based by the Commission. 16 Q Would this language, in your mind, be 17 consistent with the relevant orders of 18 state commissions? 19 A Yes. 20 Q What is different about the verbiage that 21 appears on this page from the verbiage 22 that I proposed? 23 A The -- 24 Q Which was in accordance or as configured 25 in accordance with orders of the state</p>
<p style="text-align: right;">Page 263</p> <p>1 Q The greatest safety measure? 2 A Yes. 3 Q Do you have any familiarity with what 4 local electrical service guidelines could 5 be in an individual state? 6 A I'm not familiar with anything more 7 recent. I do know that states, as well as 8 local municipalities, have a tendency, if 9 there's a particular disaster, quote, 10 unquote, a fire or something like that, 11 they sometimes want the local laws to try 12 to prevent those onetime occurrences from 13 happening again. I'm familiar with those 14 issues as they cropped up seven or eight, 15 nine years ago, my responsibility for some 16 power engineering guidelines, and we used 17 to have to incorporate those into our 18 overall engineering practices. 19 Q Would you expect those local guidelines to 20 be more conservative or less conservative 21 than the factors BellSouth uses? 22 A My experience has been they would be less 23 conservative, more safety perspective. 24 This is a very strong protection device 25 adjustment factor.</p>	<p style="text-align: right;">Page 265</p> <p>1 commission, what's different about those 2 two? 3 A The term based on engineered installed 4 power feed, fused ampere capacity is 5 describing the quantity of what's been 6 ordered, engineered, and installed. So 7 it's essentially saying, for lack of a 8 better term, how many widgets have been 9 ordered, how many widgets will be billed 10 for. A portion of that term it says, you 11 know, fused ampere capacity is the part 12 that's consistent with the applicable 13 laws. But the engineered and installed 14 power feed and the capacity aspect is just 15 talking about the quantity that was 16 purchased, and that's what will be 17 assessed. 18 Q At page 48 of your testimony, looking at 19 line 7, you explain that the phrase 20 engineered and installed power feed fused 21 ampere capacity refers to the number of 22 fused amps that will be billed in 23 accordance with whatever the CLP had 24 requested on its collocation application 25 and confirmed in its BFFO. Do you see</p>

<p style="text-align: right;">Page 266</p> <p>1 that?</p> <p>2 A Yes. I do</p> <p>3 Q Do you know what BFFO stands for?</p> <p>4 A I believe it stands for bona fide firm</p> <p>5 order</p> <p>6 Q So does this testimony mean that -- that</p> <p>7 is the CLP would tell BellSouth how many</p> <p>8 fused amps should be installed?</p> <p>9 A Yes</p> <p>10 Q And then further down the page, your</p> <p>11 testimony discusses a CLP's method of</p> <p>12 procedure, MOP?</p> <p>13 A Yes</p> <p>14 Q And this is the document that the person</p> <p>15 or entity installing the power would</p> <p>16 follow when installing the fused amps. is</p> <p>17 that correct?</p> <p>18 A Yes</p> <p>19 Q Have you ever participated on -- in any</p> <p>20 discussions relating to the dispute that</p> <p>21 remains between the parties as to section</p> <p>22 9 1 1 of this agreement or how DC power</p> <p>23 will be billed?</p> <p>24 A You say engage in discussions With who?</p> <p>25 Q With anyone at BellSouth</p>	<p style="text-align: right;">Page 268</p> <p>1 Q And you understand that this language is</p> <p>2 presently in dispute between the parties?</p> <p>3 A Yes</p> <p>4 Q Why is this bold language -- language that</p> <p>5 is in bold unacceptable to BellSouth?</p> <p>6 A I don't know why this exact language is</p> <p>7 unacceptable It could be that we're not</p> <p>8 attempting to recover non-recurring</p> <p>9 charges for 48-volt DC power If that's</p> <p>10 the case, I'd strike the whole sentence</p> <p>11 I don't know why those particular five</p> <p>12 words are unacceptable to BellSouth</p> <p>13 Q Have you been ordered in all BellSouth</p> <p>14 states not to incur non-recurring charges</p> <p>15 for 48-volt DC power?</p> <p>16 A I don't know</p> <p>17 Q Do you believe it could be the case that</p> <p>18 imposing such charges might violate an</p> <p>19 order of the state commission?</p> <p>20 A I don't know</p> <p>21 MR CULPEPPER Where is the</p> <p>22 section number we're looking at, 9 --</p> <p>23 MS JOYCE 1 1</p> <p>24 MR CULPEPPER All right</p> <p>25 Q At page 49 of your testimony beginning on</p>
<p style="text-align: right;">Page 267</p> <p>1 A Yes</p> <p>2 Q Did you ever participate on a call in</p> <p>3 which the language that appears at page 48</p> <p>4 of your testimony was discussed?</p> <p>5 A I've had conversations specific to this</p> <p>6 language with both Lynn Brewer and also</p> <p>7 Bonnie King</p> <p>8 Q Do you know whether this explanation has</p> <p>9 ever been provided to the Joint</p> <p>10 Petitioners during the course of</p> <p>11 negotiations?</p> <p>12 A I don't know</p> <p>13 Q Do you know whether the CLPs had ever</p> <p>14 requested that such an explanation be</p> <p>15 given?</p> <p>16 A I don't know</p> <p>17 Q Returning to Exhibit 9, Section 9 1 1,</p> <p>18 which is on page 46</p> <p>19 A Okay</p> <p>20 Q Do you see that for the -- essentially,</p> <p>21 the Joint Petitioners' proposed language,</p> <p>22 there's language in bold at the end of the</p> <p>23 provision that states as set by the</p> <p>24 Commission?</p> <p>25 A Okay</p>	<p style="text-align: right;">Page 269</p> <p>1 line 3, you state that BellSouth is</p> <p>2 puzzled as to why the Joint Petitioners</p> <p>3 are making certain allegations, the</p> <p>4 allegations having been reflected in the</p> <p>5 question as posed on page 48, which is</p> <p>6 that the language is vague,</p> <p>7 unintelligible So 49, you say that</p> <p>8 BellSouth is puzzled as to why Petitioners</p> <p>9 are making these allegations when the</p> <p>10 language the Joint Petitioners are</p> <p>11 complaining about is exactly the language</p> <p>12 that that exists in the Joint Petitioners</p> <p>13 current language for Section 9 1 1, the</p> <p>14 attachment before you</p> <p>15 What language in the Joint</p> <p>16 Petitioner version of 9 1 1 is exactly the</p> <p>17 same language as what we're alleging to be</p> <p>18 vague?</p> <p>19 A Do you have a copy of the current</p> <p>20 interconnection attachment with 9 1 1? We</p> <p>21 could look and see what's the same between</p> <p>22 that version and what's being negotiated</p> <p>23 Q To my knowledge, Attachment 9 is the most</p> <p>24 recent version of Attachment 4 or --</p> <p>25 excuse me, this version is the most recent</p>

<p style="text-align: right;">Page 270</p> <p>1 and that Section 9 I 1. as appears here on 2 this page. is the most recent version 3 Were you addressing there should be 4 different language? 5 A Well, honestly, what I was addressing was 6 just the Joint Petitioners' testimony that 7 talked about our language as being so 8 vague and unintelligible when we both have 9 many of the same terms in our version 10 versus your version And, you know, 11 provides Petitioners with more certainty 12 as to payment obligations. was more of a 13 comment that this is a lot of rhetoric 14 because, quite honestly, I look at these 15 two paragraphs, I consider them very 16 close Unfortunately, if the CLPs had 17 known to call me and ask me what the 18 definition of engineered and installed 19 power feed fused ampere capacity was, I 20 probably would have told them Might have 21 resolved some of these concerns So I 22 don't necessarily know why we can't 23 resolve this issue 24 So -- And so I think my testimony 25 here is not so much -- is more of</p>	<p style="text-align: right;">Page 272</p> <p>1 talked about the fact we're going to 2 comply with what the North Carolina 3 Utilities Commission says we should do in 4 this particular case I don't believe 5 we're opposed to an used amp approach I 6 do know that a used amp or meter approach 7 costs us more money to implement and to 8 maintain And as a result, we want to be 9 compensated for our costs, and there are 10 some rates that need to be set for some of 11 those costs And that -- obviously, that 12 work needs to be done 13 But in Tennessee, we've done the 14 used amp approach as well as the fused amp 15 approach We can do that in other states 16 if we need to We just need to make sure 17 that the appropriate costs are set and the 18 rates are set and the work is done to make 19 sure that we do it properly 20 (DEPOSITION EXHIBIT NO 17 WAS MARKED) 21 Q I'm handing you a document that's been 22 marked Exhibit 17 Can you tell me what 23 this document is? 24 A Appears to be -- oh, it's the first page, 25 it's interrogatory to the Alabama Public</p>
<p style="text-align: right;">Page 271</p> <p>1 response to the rhetoric on this issue 2 Our language is fairly close together I 3 don't believe our language is vague and 4 unintelligible and leaves Petitioners with 5 no certainty as to payment allegations 6 Q Do you know whether the CLPs have 7 questioned that BellSouth's language in 8 number 9 I 1 be explained here? 9 A I don't know 10 Q Do you know if it ever was explained to 11 them? 12 A I would hope in the months that this has 13 been discussed that it had been, but I 14 really don't know if it has 15 Q Would you be surprised to know that in 16 your testimony is the first time that this 17 language has been explained to the Joint 18 Petitioners? 19 A Based on this conversation, no, I'm not 20 surprised to find that out 21 Q So you've testified that BellSouth will 22 provide a choice to CLPs as to whether 23 they will use fused amps or used amps for 24 DC power, is that correct? 25 A We're going to comply -- My testimony</p>	<p style="text-align: right;">Page 273</p> <p>1 Service Commission for Docket No 29242 2 MR CULPEPPER And I'll reiterate 3 our objection to questions that go outside 4 of responses we provided to North 5 Carolina 6 Q Please turn to -- Toward the end of this 7 document is a page that's marked 34 at the 8 bottom 9 A Okay 10 Q And do you see the heading on this page 11 states that this would indicate that this 12 is a BellSouth response in North Carolina 13 to Joint Petitioner interrogatory? 14 A Yes 15 Q And it would be Item No 4-8(B)3? 16 A Yes 17 MR CULPEPPER Page 34, okay 18 Q Did you assist in the production of the 19 response that appears on this page? 20 A No, I did not 21 Q You've testified that there are costs 22 associated with BellSouth implementing a 23 used amp billing system? 24 A That is correct 25 Q Do you know what those costs are?</p>

<p style="text-align: right;">Page 274</p> <p>1 A Yes. I do Those costs would be involved 2 in the labor and the contracting 3 associated with bringing people to measure 4 the -- and potentially provide the 5 metering service for the used amps 6 Q Do you know the amount of those costs? 7 A I don't know the amount of those costs, 8 but depending on how the orders come out 9 in terms of how often or the meter or 10 complexity associated with that or where 11 we're supposed to take the meters, and 12 what kind of record keeping, documentation 13 we have to provide could affect those 14 costs 15 Q I direct your attention, again, to Exhibit 16 17, the page marked 34 And you see the 17 request asks BellSouth to provide all 18 information about how BellSouth 19 proportions the cost of provisioning DC 20 power into infrastructure related and 21 non-infrastructure related categories for 22 recurring or non-recurring categories 23 A I see that 24 Q The response below states, subject to the 25 objections that were lodged, BellSouth</p>	<p style="text-align: right;">Page 276</p> <p>1 MR MEZA Yes, please 2 MS JOYCE We'd like this 3 transcript testimony marked as proprietary 4 and confidential 5 Q Do you recognize this document? 6 A No, I do not 7 Q Have you ever reviewed a cost study for 8 BellSouth? 9 A No, I have not 10 Q Have you ever created a cost study for 11 BellSouth? 12 A I have not 13 Q Please turn the page of this exhibit Do 14 you know whether the top of the page, the 15 designation in the left-hand column, H 1 8 16 it's entitled physical collocation, power 17 per fused amp? Do you see that? 18 A Yes, I do 19 Q Does that information correspond to the 20 information identified in response to the 21 interrogatory on page 34? 22 A Yes 23 Q Element H 1 8 in BellSouth's TELRIC study? 24 A Yes 25 Q It does correspond?</p>
<p style="text-align: right;">Page 275</p> <p>1 does not have a specific TELRIC study for 2 North Carolina for the provisioning of DC 3 power Do you see that? 4 A Yes, I do 5 Q Does BellSouth have any cost study in 6 North Carolina for the provisioning of DC 7 power? 8 A I don't know 9 Q Does it have a TELRIC study for 10 provisioning DC power in any other state? 11 A I don't know 12 Q And this response goes on to state that 13 the cost of DC power is one component of 14 element H 1 8 in a BellSouth TELRIC 15 study Do you see that? 16 A Yes, I do 17 (DEPOSITION EXHIBIT NO 18 WAS MARKED) 18 Q Going to hand you a document that's been 19 marked Exhibit 18 20 MS JOYCE I'll note for the 21 record that this is a portion of a cost 22 study that was produced in electronic form 23 to the Joint Petitioners 24 BellSouth, do you want this 25 treated as proprietary and confidential?</p>	<p style="text-align: right;">Page 277</p> <p>1 A Yes 2 Q Can you tell me what the figures on this 3 line mean? 4 A The line that says H 1 8, physical 5 collocation, power per fused amp, it says 6 recurring, \$7 65 I don't know whether 7 that's the cost or the rates or what it 8 would be on this particular page 9 Q Do you notice that this document has Bates 10 labels on it? 11 A Yes, I do 12 Q CST, a bunch of numbers Please turn to 13 the page that's marked CST018581 And do 14 you see there there's a matrix and there's 15 a line item identified as H 1 8, physical 16 collocation, power per fused amp? 17 A Yes, I see that 18 Q And can you explain what is depicted in 19 these numbers? There's -- The figure 20 \$7 65 appears in a column entitled 21 revised And then as filed, September 22 2000 states \$8 50 for the same line item, 23 and there's a difference of 85 cents Do 24 you see that? 25 A Yes, I do see that</p>

<p style="text-align: right;">Page 278</p> <p>1 Q Do you know what that is intended to 2 represent? 3 A Other than the same summary you just 4 provided? It's revised number, a filed 5 number, and it's simply trying to state 6 the difference between those two 7 Q Do you have training as an economist? 8 A No 9 Q Have you ever testified before any 10 tribunal related to BellSouth's cost 11 analysis for DC power? 12 A I have not 13 Q Have you ever testified as to BellSouth's 14 cost analysis for any -- anything related 15 to local competition? 16 A That's going to depend on your definition 17 "related to local competition" I have 18 provided -- in a couple of arbitrations or 19 complaint cases associated with DSL and 20 broadband, provided information in cost 21 for the development of various 22 capabilities that were being asked for 23 Also done -- Well, there's testimony that 24 talked about the cost to deploy certain 25 types of equipment or DSLAMs But those</p>	<p style="text-align: right;">Page 280</p> <p>1 A I do not 2 Q To your knowledge, is BellSouth willing to 3 offer CLPs a choice to use used amp 4 billing in states other than Tennessee? 5 A Yes, we're willing and able to do that and 6 offer that as long as the rates are 7 established and the procedures are 8 established to properly do a fused amp -- 9 excuse me, a used amp approach 10 Q Have rates been established for used amp 11 billing in Tennessee? 12 A In Tennessee, yes 13 Q How are they established? 14 A I don't know how they were established 15 Q You don't know whether they were imposed 16 by the Tennessee Regulatory Authority? 17 A I don't know if they were imposed I 18 don't know if we proposed them I do 19 imagine they were probably discussed 20 pretty heavily at some point 21 Q Are you familiar with -- strike that 22 What other terms and conditions 23 would BellSouth need to negotiate with 24 CLPs in other states in order to implement 25 a used amp billing situation?</p>
<p style="text-align: right;">Page 279</p> <p>1 were not cost studies, they were estimates 2 that I had provided based on my experience 3 in the industry for the costs associated 4 with those kind of service developments or 5 software developments as well as the 6 equipment developments 7 Q Do you know which BellSouth employee or 8 employees was responsible for creating 9 this cost study? 10 A I do not 11 Q Do you know which BellSouth employee or 12 employees could interpret this cost study 13 document? 14 A If I were looking for an interpretation, I 15 would ask either Bernard Shell or Reg 16 Starks 17 Q Is that S-h-e-l-l? 18 A Yes 19 Q Or Rich -- 20 A Reg Starks 21 Q S-t-a-r-k-s? 22 A Yes 23 Q Do you know what purpose this cost study 24 was provided to the North Carolina 25 Commission?</p>	<p style="text-align: right;">Page 281</p> <p>1 A Our preference would be to have a similar 2 process in all states Florida and 3 Tennessee differ in that Tennessee 4 requires us to meter and then we bill 5 Based on what we measure in Florida, we 6 bill based on what the CLP tells us 7 they're using, and then we have the right 8 to audit that and then reconcile the bills 9 appropriately Those procedures are 10 different, different rules 11 And so our preference would be to 12 adopt a similar set of rules and, you 13 know, have one set of rules and one set of 14 procedures that we can kind of uniformly 15 provide in every state So I think our 16 preference would be that, if North 17 Carolina chooses to go down this path, 18 that they will model it to Tennessee 19 Q Tennessee would be an appropriate model 20 for used amp billing in North Carolina? 21 A Yes 22 Q Would that be including the rate structure 23 that was adopted in Tennessee? 24 A I don't know if the rate structure would 25 be applicable simply because there may be</p>

<p style="text-align: right;">Page 282</p> <p>1 different cost components in North 2 Carolina than in Tennessee 3 Q You state at page 57 of your testimony 4 that there are several components of what 5 the CLP would need to pay for for the 6 recurring charges for DC power. There 7 would be an AC usage charge. And that's 8 on line 10. Do you see that? 9 A Yes 10 Q And does that relate to the amount of 11 power used on a monthly basis by the CLP? 12 A Yes. Yes, it is. 13 Q And that there would be a minimum of 10 14 amps that would be presumed to be used by 15 the CLP? 16 A Yes 17 Q And then further down at lines 14 to 15, 18 it states that there is also a monthly 19 recurring charge for power plant 20 infrastructure investment. Do you see 21 that? 22 A That is correct. 23 Q And does that reflect what we've discussed 24 in terms of the work BellSouth would do to 25 implement a power feed situation for a</p>	<p style="text-align: right;">Page 284</p> <p>1 A No, I do not. 2 Q The front page indicates it's something 3 that's regarded to the Tennessee 4 Regulatory Authority. Do you understand 5 that the Utilities Commission that would 6 have jurisdiction over BellSouth regarding 7 collocation? 8 A Yes. 9 Q And there's a title on the page, Order 10 Denying Reconsideration, Granting 11 Clarification, And Adopting WorldCom's 12 Final Best Offer. Do you see that? 13 A Yes, I do. 14 Q Do you understand this is a type of order 15 the Tennessee Regulatory Authority, or TRA 16 for short, would have issued? 17 A Yes. 18 Q Please turn to what is marked as page 7 on 19 the bottom. I don't know the source of 20 the markings that are on this page. 21 A I appreciate the highlighting. It makes 22 it much easier to find the reference 23 you're looking for. 24 Q The end of the day. Got to be quick. 25 Do you see that the highlighted</p>
<p style="text-align: right;">Page 283</p> <p>1 collocated CLP? 2 A That would be, again, covering us for 3 engineering and installation of the 4 appropriate facilities and equipment 5 necessary to provide the DC power. 6 Q And then beginning at line 17, you state, 7 finally, BellSouth would bill the CLP a 8 monthly recurring charge per site -- 9 further down -- to provide the clamp-on 10 ammeter, a-m-m-e-t-e-r. Did I pronounce 11 that correctly? 12 A No, it's actually ammeter. 13 Q Ammeter. 14 A Yes. 15 Q Or other large measurement device. Do you 16 see that? 17 A Yes. 18 Q So BellSouth would want to charge a 19 monthly basis to the CLP, the costs of 20 this ammeter or some measurement device? 21 A Yes. 22 (DEPOSITION EXHIBIT NO. 19 WAS MARKED.) 23 Q Handing you a document that has been 24 marked Exhibit 19. Do you recognize this 25 document?</p>	<p style="text-align: right;">Page 285</p> <p>1 language, it states that it's reasonable 2 to conclude that WorldCom should pay the 3 reasonable costs of monitoring actual DC 4 consumption? 5 A Yes, I do. 6 Q And do you believe that the rate structure 7 adopted in Tennessee is an appropriate 8 rate structure for BellSouth to recover 9 its costs? 10 A I don't know whether the rate structure in 11 Tennessee is appropriate to cover our 12 costs. I do know that it has some 13 non-recurring and recurring components 14 associated with the activity in the work 15 and the costs associated with doing the 16 measuring and the metering. I don't know 17 whether it covers our costs or not. 18 Q Regarding the costs of providing 19 a clamp-on ammeter-- 20 A Uh-huh. 21 Q -- could a CLP provide that ammeter? 22 A They could provide the actual device, but, 23 obviously, we would be wanting to take the 24 reading ourselves or hire a contractor to 25 do the reading on our behalf.</p>

<p style="text-align: right;">Page 286</p> <p>1 Q In your opinion, would it be unreasonable 2 to conclude that WorldCom should pay the 3 cost of monitoring DC consumption in any 4 other state? 5 A Could you repeat your question, again? I 6 think I got caught up in the positives and 7 negatives of it 8 Q The TRA states here, it is reasonable to 9 conclude that WorldCom should pay 10 reasonable costs 11 A Yes 12 Q Do you have any reason to doubt that that 13 conclusion should apply in other states? 14 A I think it's reasonable that whoever is 15 causing us to go through additional steps, 16 additional costs should be responsible for 17 covering those costs 18 Q Are you aware of the rates, if any, that 19 were proposed to the Joint Petitioners 20 when negotiating the rates that will apply 21 to DC power? 22 A I'm not familiar with what was proposed to 23 the Joint Commissioners 24 Q At page 45 -- excuse me, 54 of your 25 testimony at line 6. What is your basis</p>	<p style="text-align: right;">Page 288</p> <p>1 structure is understood and the rates are 2 established for, you know, doing that kind 3 of work, we'll be happy to, you know, do 4 that additional work on behalf of the 5 CLPs, if necessary 6 Q So your position is BellSouth is willing 7 to provide CLPs a choice in North Carolina 8 to use used amp billing for AC power? 9 A Again I don't know why anyone would 10 request that, but if -- you know, again, 11 we're not fundamentally opposed to used 12 amp approach. Our infrastructure is not 13 designed to do it. It's a very manual 14 approach that requires us to have 15 significant costs associated with paying 16 someone to do the metering. So if, you 17 know, the CLPs are willing to cover the 18 costs of the additional metering 19 associated with AC used amp versus fused 20 amp, then I don't understand why we would 21 be opposed to do that. I don't think we 22 would be 23 Q Has any state commission ordered BellSouth 24 to provide a fused amp with option for AC 25 power?</p>
<p style="text-align: right;">Page 287</p> <p>1 for the statement that Joint Petitioners 2 were unwilling to negotiate? 3 A It's based on my conversations with Lynn 4 Brewer, who was involved in the 5 negotiation 6 Q Do you know whether the rates that were 7 proposed to Joint Petitioners were 8 accompanied by any cost support that 9 explained why the rates were what they 10 were? 11 A I don't know 12 Q Is there any reason that BellSouth 13 supplied AC power in a collocation site 14 should be billed under a different method 15 than BellSouth supplying DC power? 16 A If -- I don't know of any reasons that we 17 wouldn't use -- like I said -- and I 18 think what you're looking for is a fused 19 versus used amp approach on AC power as in 20 addition to DC power. Again, it's one 21 that escapes us because if you're an 22 efficient designer, you're actually going 23 to end up paying more to have us meter 24 what you ask for 25 But, you know, if the cost</p>	<p style="text-align: right;">Page 289</p> <p>1 A Yes. Have a fused amp billing power? 2 Q I'll rephrase it 3 A Thank you 4 Q Has any state commission ordered BellSouth 5 to provide a used amp billing option for 6 AC power? 7 A Not that I'm aware of 8 MR. MEZA: Can we go off the 9 record for a second? 10 (DISCUSSION OFF THE RECORD) 11 Q To your knowledge, has any CLP requested 12 of BellSouth that it negotiate rate terms 13 and conditions for using used amp billing 14 for AC power? 15 A No, I don't know of any requested used amp 16 billing for AC power 17 Q Mr. Fogle, do you know what ruling, if 18 any, the Georgia Commission has made with 19 respect to whether used amp billing should 20 be provided for DC power? 21 A I believe Georgia has ordered that used 22 amp billing be available. I do not 23 believe they have set the rates for us to 24 do that. So we're kind of awaiting the 25 rates so we understand how much to bill</p>

<p style="text-align: right;">Page 290</p> <p>1 for before we can make a complete option 2 available to CLPs 3 Q Do you know whether BellSouth has provided 4 cost study information be available to 5 Georgia to assist in setting rates? 6 A I don't know if we have yet or not 7 Q Do you know what ruling, if any, the 8 Florida Commission has made with respect 9 to whether BellSouth must provide a used 10 amp billing method for DC power? 11 A The Florida Commission has ruled that we 12 must provide used amp billing method 13 saying approved -- or ruled a different 14 method than is in Tennessee Procedures 15 are a little different And, again, they 16 also have not provided rates yet for the 17 various pieces of that, so we're waiting 18 for them to come back with the rates 19 Q Is the rate structure -- Is the rate 20 structure different or the rate amounts 21 different? 22 A I don't know, to tell you the truth, if 23 the structure is different I know the 24 work requested and the work -- undergoing 25 work is different between Tennessee and</p>	<p style="text-align: right;">Page 292</p> <p>1 ERRATA SHEET 2 3 Case name In the Matter of 4 5 Joint Petition NewSouth 6 Communications for 7 Arbitration with BellSouth 8 9 Deponent Eric Fogle 10 11 Date 12 13 PAGE LINE READS SHOULD READ 14 / / / 15 / / / 16 / / / 17 / / / 18 / / / 19 / / / 20 / / / 21 / / / 22 / / / 23 / / / 24 / / / 25 / / /</p>
<p style="text-align: right;">Page 291</p> <p>1 Florida I would assume that would turn 2 itself into the costs and also the rates 3 MS JOYCE All right Given that 4 the parties are presently trying to work 5 out an agreement but have not done so in 6 terms of whether depositions will be taken 7 in each state, I reserve the right to call 8 you as a witness in any other state 9 And to the extent that you may 10 file additional testimony in the State of 11 North Carolina regarding the issues we've 12 spoken to today or BellSouth's positions 13 change, I reserve the right to reopen your 14 deposition to discuss those changes with 15 you 16 THE WITNESS Okay 17 MS JOYCE I thank you for 18 coming, and the deposition is concluded 19 MR CULPEPPER No questions 20 (THE DEPOSITION CONCLUDED AT 5 11 P M) 21 22 23 24 25</p>	<p style="text-align: right;">Page 293</p> <p>1 SIGNATURE 2 I Eric Fogle do hereby state under oath 3 that I have read the above and foregoing 4 deposition in its entirety and that the 5 same is a full true and correct 6 transcript of my testimony 7 Signature is subject to corrections on 8 attached errata sheet if any 9 10 Eric Fogle 11 12 State of 13 14 County of 15 16 Sworn to and subscribed before me this 17 day of 20 18 19 Notary Public 20 21 My commission expires 22 23 24 25</p>

Page 294

CERTIFICATE
State of North Carolina
County of Harnett

I Nicole Ball Fleming, a notary public in
and for the State of North Carolina, do
hereby certify that there came before me
on the 29th day of June, 2004, the person
hereinbefore named, who was by me duly
sworn to testify to the truth and nothing
but the truth of his knowledge concerning
the matters in controversy in this cause,
that the witness was thereupon examined
under oath, the examination reduced to
typewriting by myself, and the deposition
is a true and accurate transcription of
the testimony given by the witness.

I further certify that I am not counsel
for, nor in the employment of any of the
parties to this action; that I am not
related by blood or marriage to any of the
parties; nor am I interested, either
directly or indirectly, in the results of
this action.

In witness whereof, I have hereto set my
hand and affixed my official notarial
seal, this the 12th day of July, 2004.

Nicole Ball Fleming
Notary Public
My commission expires 1/30/05

ERRATA SHEET

Case name: In the Matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Eric Fogle

Date: 1/10/05 - ~~ERRATA~~ FROM FIRST DEPOSITION

PAGE	LINE	READS	SHOULD READ
16	/ 22	/ Rasilli	/ Ruscilli
20	/ 24	/ Miller	/ Milner
25	/ 7	/ Rasilli	/ Ruscilli
25	/ 15	/ Rasilli	/ Ruscilli
31	/ 11	/ Health	/ Public
73	/ 21	/ PERM	/ FRAME
73	/ 24	/ GI/SHDSL	/ G.SHDSL
134	/ 10	/ ATC, DELTACOM	/ ITC ^ DeltaCom
	/	/	/
	/	/	/
	/	/	/
	/	/	/

ERRATA SHEET

Case name: In the Matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Eric Fogle

Date: ~~12/7/04~~ 1/10/05 - ERRATA FROM SECOND DEPOSITION

PAGE	LINE	READS	SHOULD READ
320	/ 11 /	6.3	/ 643
341	/ 4 /	PSE	/ PSC
346	/ 9 /	Port	/ Part
347	/ 21 /	ISDM	/ ISDN
	/ /		/
	/ /		/
	/ /		/
	/ /		/
	/ /		/
	/ /		/
	/ /		/
	/ /		/

NICOLE FLEMING & ASSOCIATES
(919) 567-1123

SIGNATURE

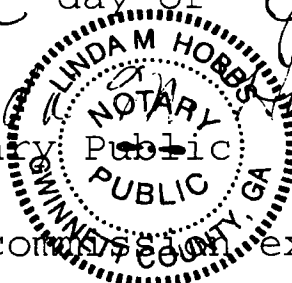
I, Eric Fogle, do hereby state under oath
that I have read the above and foregoing
deposition in its entirety and that the
same is a full, true and correct
transcript of my testimony.

Signature is subject to corrections on
attached errata sheet, if any.


Eric Fogle

State of *Georgia*
County of *Fulton*

Sworn to and subscribed before me this
10th day of *January*, 2005.


Notary Public

My commission expires:

Notary Public, Gwinnett County, Georgia
Commission Expires March 17, 2007

SIGNATURE

I, Kathy Blake, do hereby state under oath
that I have read the above and foregoing
deposition in its entirety and that the
same is a full, true and correct
transcript of my testimony.

Signature is subject to corrections on
attached errata sheet, if any.

Kathy Blake
Kathy Blake

State of *Georgia*

County of *Duval*

Sworn to and subscribed before me this
5th day of *January*, 2005.

Notary Public *Teresa L. Rockwell*

My commission expires:

TERESA L. ROCKWELL
Notary Public, Gwinnett County, Georgia
My Commission Expires October 28, 2005

ERRATA SHEET

Case name: In the Matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Kathy Blake, Volume I

Date:

PAGE	LINE	READS	SHOULD READ
11	1	Racilly	Ruscilli
19	25	call in	calling
85	9	would	would not
109	25	in	and
121	17	129	29
129	7	pages	phases
/	/		/
/	/		/
/	/		/
/	/		/
/	/		/
/	/		/

SIGNATURE

I, Kathy Blake, do hereby state under oath
that I have read the above and foregoing
deposition in its entirety and that the
same is a full, true and correct
transcript of my testimony.

Signature is subject to corrections on
attached errata sheet, if any.

Kathy Blake
Kathy Blake

State of *Georgia*
County of *Fulton*

Sworn to and subscribed before me this
5th day of *January*, 2005.

Notary Public *Teresa L. Rockwell*

My commission expires:

TERESA L. ROCKWELL
Notary Public, Gwinnett County, Georgia
My Commission Expires October 28, 2005

ERRATA SHEET

Case name: In the Matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Kathy Blake, Volume II

Date:

PAGE	LINE	READS	SHOULD READ
158	24	1 DSL	1 DSØ
203	13	1 founding	1 finding
211	7	1 know. we	1 know if we
240	19	1 revisions	1 provisions
277	6	1 wasn't	1 was
278	20	1 cuts	1 guts
302	8	1 intraconnection	1 interconnection
398	3	1 specially	1 socially
400	7	1 board	1 port
403	3	1 we	1 Joint Petitioners
427	18	1 intercommercial	1 commercial
428	7	1 but BellSouth	1 but if BellSouth

ERRATA SHEET

Case name: In the Matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Kathy Blake, Volume II

Date:

PAGE	LINE	READS	SHOULD READ
428	9	251 element. We	251 element, we
438	4	to DS-1	to DS-3
440	10	in	and
481	2	their	our
482	24	we	they
500	8	forget	feel
	/	/	/
	/	/	/
	/	/	/
	/	/	/
	/	/	/
	/	/	/

ERRATA SHEET

Case name: In the matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Carlos Morillo

Date: _____

PAGE	LINE	READS	SHOULD READ
7	4	/ for	/ to
10	11	/ C-L-A-R-C-K	/ C-L-A-R-K
15	9	/ DBI	/ BBI
18	3	/ and accompany	/ those people folks in the company
20	19	/ improve	/ approve
23	17	/ guys	/ guides
23	18	/ irrelevant	/ relevant
24	11	/ endlessly	/ seamlessly
31	7	/ Tribunal	/ Triennial
34	2	/ from	/ for
36	4	/ installment	/ installing
50	2	/ to	/ the

ERRATA SHEET

Case name: In the matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Carlos Morillo

Date: _____

PAGE	LINE	READS	SHOULD READ
51	3	have not	had
75	7	uh-uh	no
83	14	strenuous	extraneous
85	13	Universal	Unbundled
95	10	frequent	infrequent
107	4	correctly	exactly
134	4	see	send
135	20	I've	we've
155	12	will	we'll
156	10	two	the true
156	24	off	in
174	18	regional	retail

NICOLE FLEMING & ASSOCIATES
(919) 567-1123

ERRATA SHEET

Case name: In the matter of
Joint Petition NewSouth
Communications for
Arbitration with BellSouth

Deponent: Carlos Morillo

Date: _____

PAGE	LINE	READS	SHOULD READ
186 /	7 /	he	/ it
198 /	13 /	IKOs	/ ICOs
198 /	24 /	IKOs	/ ICOs
198 /	24 /	IKOs	/ ICOs
/	/		/
/	/		/
/	/		/
/	/		/
/	/		/
/	/		/
/	/		/
/	/		/
/	/		/

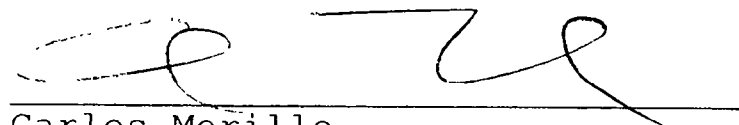
NICOLE FLEMING & ASSOCIATES
(919) 567-1123

Page 254

SIGNATURE

I, Carlos Morillo, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcript of my testimony.

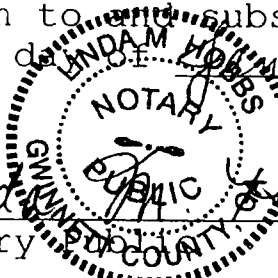
Signature is subject to corrections on attached errata sheet, if any.



Carlos Morillo

State of Georgia
County of Fulton

Sworn to and subscribed before me this
10th day of January, 2015.


Linda M. Gibbs
Notary Public, Gwinnett County, Georgia

My commission expires: Notary Public, Gwinnett County, Georgia
My Commission Expires March 17, 2007

Page 295

Page 297

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

Docket No. F-771, Sub. 6
Docket No. F-915, Sub. 5
Docket No. F-959, Sub. 3
Docket No. F-824, Sub. 6
Docket No. F-1202, Sub. 1

In the Matter of)
)
Joint Petition NewSouth)
Communications Corp., et al. for)
Arbitration with BellSouth)
Telecommunications, Inc.)

Raleigh, North Carolina
Tuesday, December 7, 2004
Deposition of ERIC FOGLE,
VOLUME II

A witness herein, called for
examination by counsel for the Joint
Petitioners, in the above-entitled action,
pursuant to Notice, the witness being duly
sworn by Nicole Ball Fleming, Court
Reporter and Notary Public in and for the
State of North Carolina, taken at the
offices of Parker Poe Adams & Bernstein,
150 Fayetteville Street Mall, Suite 1400,
Raleigh, North Carolina, beginning at
11:13 p.m., on Tuesday, December 7, 2004,
such proceedings being taken
stenographically by Nicole Ball Fleming

INDEX TO EXAMINATIONS & EXHIBITS

1 Examination Page
3 Continued Direct by Ms. Joyce 299
Cross by Mr. Culpepper 359

Deposition Exhibit Page
19 Notice of Deposition 299
20 Deposition from 6/29/04 300
21 Supplemental Direct Testimony 302
22 Rebuttal Testimony 305
23 Appendix B - Final Rules 316

Page 296

Page 298

APPEARANCES OF COUNSEL

On behalf of the Joint Petitioners

Stephanie Joyce
John J. Hartmann
Kelley Dye & Warren
1200 19th Street NW
Suite 500
Washington DC 20036

On behalf of BellSouth

Jim Meza
Robert Culpepper
BellSouth Legal Department
675 West Peachtree Street NE
Suite 4300
Atlanta GA 30375

STIPULATIONS

1 Prior to examination of the witness
2 counsel for the parties stipulated and
3 agreed as follows:
4 1. Said deposition shall be taken for
5 the purpose of discovery or for use as
6 evidence in the above-entitled action or
7 for both purposes as permitted by the
8 applicable rules of civil procedure.
9 2. Any objections of any party hereto as
10 to Notice of the taking of said deposition
11 or as to the time and place thereof or as
12 to the competency of the person before
13 whom the same shall be taken are hereby
14 waived.
15 3. Objection to questions and motions to
16 strike answers need not be made during the
17 taking of this deposition but may be made
18 for the first time during the progress of
19 the trial of this case or at any pretrial
20 hearing held before the Judge for the
21 purpose of ruling thereon or at any other
22 hearing of said case at which said
23 deposition might be used except that an
24 objection as to the form of a question
25 must be made at the time such question is
asked or objection is waived as to the
form of the question.
4 That all formalities and requirements
of the Statute with respect to any
formalities not herein expressly waived
are hereby waived, especially including
the right to move for the rejection of
this deposition before trial for any
irregularities in the taking of the same
either in whole or in part or for any
other cause.
5 That the sealed original transcript
of this deposition shall be mailed
first-class postage or hand delivered to
the party taking the deposition or its
attorney for preservation and delivery to
the Court at and when necessary.

1 (Pages 295 to 298)

NICOLE FLEMING & ASSOCIATES
(919) 567-1123

Page 299

Page 301

1 ERIC FOGLE
2 having been duly sworn.
3 testified as follows
4 CONTINUED DIRECT EXAMINATION
5 BY MS JOYCE
6 Q Good afternoon. Mr Fogle I am Stephanie
7 Joyce We met in June
8 A Uh-huh
9 Q How are you doing today?
10 A Doing fine
11 Q Are you the same Eric Fogle that appeared
12 for deposition in June 2004 of this year?
13 A Yes
14 (DEPOSITION EXHIBIT NO 19 WAS MARKED)
15 Q Mr Fogle I'm handing you an exhibit
16 marked No 19 It's a continuation from
17 the last time
18 Do you recognize this document?
19 A No. I do not
20 Q You've never seen this document before?
21 A I may have It looks like a notice of
22 deposition
23 Q Is there anything I can show you that
24 would refresh your recollection on that
25 point?

1 Q Do you see page 6?
2 And please read to yourself lines
3 12 to 20
4 A I am handing you an exhibit that's been
5 marked 1 Have you seen this exhibit --
6 this document before?
7 And my answer was yes I have
8 Your question was. can you tell me
9 what it is?
10 The answer it's a notice of
11 deposition of Eric Fogle
12 Q Does that refresh your recollection as to
13 whether you've seen the Exhibit 19 before?
14 A Apparently I have I've simply forgotten
15 that I've seen it
16 Q So you understand that you have been
17 provided to Joint Petitioners by BellSouth
18 as a witness to discuss issues on which
19 you've provided written testimony?
20 A Yes I do
21 Q And you understand that the testimony that
22 you give on these issues will bind
23 BellSouth as a company?
24 A Yes I do
25 Q And do you understand that you are

Page 300

Page 302

1 A I mean. you're asking me if I've seen this
2 before I don't know I may have I
3 mean
4 Q Right Is there anything -- any document
5 I could show you that would refresh your
6 recollection on that point?
7 A I mean you could show me that I've seen
8 it before I mean. you may have shown it
9 to me in June I don't remember
10 Q All right Just so we're clear
11 A Uh-huh
12 Q I'm handing you an exhibit marked 20
13 (DEPOSITION EXHIBIT NO 20 WAS MARKED)
14 Q Have you seen that document before?
15 A No. I have not
16 Q Would you accept that this is a transcript
17 from the deposition that you gave June
18 29th of this year?
19 A Yes
20 Q Can you turn to page 6 of that document
21 please It's actually the second full
22 page
23 A I see it
24 Q And you see it's in quads?
25 A Yes I see that

1 considered the person with the most
2 knowledge about the issues on which you've
3 given written testimony?
4 A Yes I do
5 (DEPOSITION EXHIBIT NO 21 WAS MARKED)
6 Q Mr Fogle I'm handing you a document
7 marked Exhibit 21 Do you recognize this
8 document?
9 A Yes I do
10 Q And can you tell me what it is?
11 A It's supplemental direct testimony of Eric
12 Fogle before the North Carolina Utilities
13 Commission
14 Q And did you write this document?
15 A Yes I did
16 Q At whose direction did you write this
17 document?
18 A I wrote it at my own direction I worked
19 with a number of folks within BellSouth to
20 develop certain points. but I wrote the
21 document
22 Q And with whom at BellSouth did you consult
23 as you wrote it?
24 A A number of subject matter experts
25 including Tommy Williams Jerry Latham.

2 (Pages 299 to 302)

Page 303

Page 305

1 Steve Harris, Jerry Johnson, Keith Milner
2 Q What is Mr. Tommy Williams' title?
3 A He's a product manager. He's responsible
4 for line sharing products.
5 Q Had he helped you with the testimony that
6 you submitted in this arbitration in June?
7 A I believe so.
8 Q And you've named Tommy Williams, Steve
9 Harris, Keith Milner -- I'm sorry, there
10 was one other?
11 A There was also Jerry Latham.
12 Q What is Mr. Latham's title?
13 A He's also a product manager.
14 Q My understanding is that Mr. Milner is
15 senior director of network
16 interconnection, is that correct?
17 A That's correct.
18 Q Do you report directly to him?
19 A Yes, I do.
20 Q Did anybody other than these gentlemen
21 review your testimony that you have in
22 front of you before it was filed?
23 A There's quite a few folks who may or may
24 not have reviewed it. I know there's a
25 distribution list for internal review that

1 (DEPOSITION EXHIBIT NO. 22 WAS MARKED)
2 Q Do you recognize this document?
3 A Yes, I do.
4 Q Can you tell me what it is, please?
5 A It's rebuttal testimony of Eric Fogle
6 before the Tennessee Regulatory Authority.
7 Q Did you consult with anybody at BellSouth
8 as you wrote this testimony?
9 A It would have been the same folks that I
10 mentioned in the previous testimony. I
11 would have asked them to review this
12 testimony.
13 Q And did the same distribution and edits
14 back process apply to this set of
15 testimony?
16 A Yes, it would have. There would have been
17 a slightly different distribution because
18 it's a different state. There would have
19 been some Tennessee-specific reviewers as
20 opposed to North Carolina-specific
21 reviewers, but the majority of the folks
22 who would review it would be the same.
23 Q Would Mr. Milner have reviewed it on a
24 state-specific basis?
25 A Yes, he would review both of these

Page 304

Page 306

1 we'll send out testimony that's going to
2 be filed to a number of different people
3 with lawyers and subject matter experts.
4 I don't know which of them might have
5 reviewed it.
6 Q Did you receive edits back from anybody on
7 the distribution list?
8 A Either I would have received them or Jerry
9 Johnson or Steve Harris would have
10 received them.
11 Q And from whom would Mr. Johnson have
12 received them?
13 A Typically when we send out testimony for
14 review, we ask the people to respond back
15 to myself and to Jerry Johnson or Steve
16 Harris, and so people typically reply back
17 to both of us.
18 Q Did you typically implement the edits that
19 had been sent to you or Mr. Johnson?
20 A I review all of them. I accept some, I
21 reject others. I don't really recall
22 which ones, but ultimately I'm responsible
23 for what's in my testimony.
24 Q Mr. Fogle, I'm now handing you a document
25 that's been marked as Exhibit 22.

1 Q And is the same true for Mr. Jerry Latham?
2 A Yes.
3 Q And, Mr. Fogle, I believe that you are not
4 an attorney, is that correct?
5 A That is correct. I am not an attorney.
6 Q Are you aware that Scot Ferguson in his
7 written testimony stated that he offers no
8 legal conclusion?
9 MR. CULPEPPER: Object to the
10 question -- form of the question. And
11 his deposition here is going to be as
12 limited to the revisions he's made to his
13 testimony or any additions to it. I don't
14 see how the question goes to either one of
15 those two areas.
16 MS. JOYCE: It's essentially
17 foundational. Mr. Fogle, from what I've
18 seen, has not included such a statement,
19 and I just wanted to make sure that that
20 was clear as to both the November 12th and
21 the November 19th testimony.
22 MR. CULPEPPER: His testimony
23 or --
24 MS. JOYCE: Mr. Fogle's own
25 testimony.

3 (Pages 303 to 306)

Page 307

Page 309

1 MR CULPEPPER And the question
2 about his testimony would be something
3 that's in Mr. Ferguson's testimony?

4 MS JOYCE No I'm asking --
5 We're kind of getting ahead of ourselves
6 I refer to Mr. Ferguson's testimony for
7 comparative purposes only and I want to
8 clarify that Mr. Fogle has not made the
9 same representation in his testimony

10 MR CULPEPPER I'm not sure if
11 I'm following, but go ahead and ask this
12 question

13 Q Do you understand my question?

14 A The last question I believe you asked me
15 was if I was familiar with Mr. Ferguson's
16 testimony I have not read Mr. Ferguson's
17 testimony

18 Q Are there -- Did you represent in
19 this -- these two sets of testimony
20 before you, November 12th, November 19th,
21 as to whether you are making any legal
22 opinions or conclusions therein?

23 A I am not a lawyer, so I wouldn't consider
24 myself qualified to make a legal opinion
25 or conclusion

1 appropriate to have this type of issue in
2 an arbitration since it's not an
3 arbitratable issue from my perspective

4 Q And you don't consider this statement to
5 be a legal conclusion or opinion?

6 A No, I don't

7 Q Would you characterize it as a policy
8 opinion?

9 A I'd characterize it as one of the reasons
10 why this issue shouldn't be in the
11 arbitration There are probably others
12 Q But you consider it a statement of policy?

13 MR CULPEPPER I'm going to
14 object to the line of questioning First
15 I think the question's been asked and
16 answered, but I think, more importantly,
17 going to the scope of this deposition
18 which would be new matters or portions of
19 Mr. Fogle's testimony that he's changed

20 I think if we go back his
21 testimony, number one, about whether or
22 not certain issues are appropriate for 251
23 has been his testimony from the outset

24 And secondly, I think if you look
25 at his transcript from June, pages 114 and

Page 308

Page 310

1 Q So your intent in this testimony was not
2 to make legal conclusions?

3 A I agree

4 Q Can you please turn to Exhibit 21 your
5 November 12th testimony And look at page
6 20, please Lines 13 to 16
7 Do you have that?

8 A Yes I do

9 Q You state here that the interconnection
10 agreement at issue in this arbitration is
11 an agreement pursuant to Section 251 of
12 the Act and it is not appropriate to
13 require services not mandated pursuant to
14 Section 251 to be included in this
15 agreement

16 On what did you base this
17 statement?

18 A I based this statement on my understanding
19 of DSL services, the jurisdiction for DSL,
20 and the obligation to provide DSL are --
21 with my understanding don't come out of
22 the -- Section 251 This should be
23 subject to commercial agreements So I
24 was just simply making a statement that,
25 more than anything else it's just not

1 115, I think this question has been asked
2 and answered by Mr. Fogle

3 Q Okay Mr. Fogle, could you look at
4 Exhibit 22, please which is your November
5 19th

6 A Okay

7 Q And look at page 3, lines 4 to 6 You
8 state that it is impossible to square the
9 Joint Petitioners' statement with the
10 FCC's findings in paragraph 643 of the
11 TRO Do you see that?

12 A Yes I do

13 Q Is that your policy opinion?

14 A It's my opinion when I read the testimony
15 of the CLECs versus what I read in the
16 TRO I don't -- I mean, they seem to be
17 saying exact opposites

18 Q And this is based on your own read of the
19 TRO?

20 A Yes

21 Q All right, Mr. Fogle, we'll begin with
22 Issue 2-18, line conditioning

23 Has your testimony to the North
24 Carolina Commission of November 12th
25 changed from what you wrote to that same

4 (Pages 307 to 310)

Page 311

Page 313

1 commission on June 4th of this year?
2 A I don't believe it has changed. I'd have
3 to look at the two side by side to know
4 for sure.
5 Q And why would it not have changed?
6 MR CULPEPPER Object to the form
7 of the question. Is there something
8 particular in his testimony that you're
9 asking him about, a particular page?
10 Q Has BellSouth's issue on 218 changed since
11 June of 2004?
12 A No, it has not.
13 Q And returning to Exhibit 22, your November
14 19th testimony. Beginning at page 2 is
15 your discussion of Issue 218.
16 Where did you derive the position
17 that you take at lines 15 to 22 on page 2?
18 A I'm sorry, I don't really understand.
19 Where did I derive my position? What
20 thoughts did I have or --
21 Q How did you reach the conclusion?
22 A Reach this conclusion? I reached this
23 conclusion that -- I mean, the TRO
24 clarifies the definitions of line
25 conditioning and, more importantly, the

1 just cited. I don't see how this is any
2 different.
3 MS JOYCE Well, actually
4 counsel, I'm quoting to him from his
5 rebuttal testimony, which is new, and he's
6 specifically addressing the Joint
7 Petitioners' position from earlier, so
8 it's not the same as what I deposed him on
9 in June. He's taken a position directly
10 addressing a Joint Petitioners' position
11 and specifically the interplay of a rule
12 and the order. So it is -- it's actually
13 a new subject, and I just would like to
14 know from where he came to that
15 conclusion.
16 MR CULPEPPER Yeah, go ahead
17 with it.
18 A Can you ask your question for me again?
19 Repeat your question.
20 Q How -- Is it fair to say that the
21 statement appearing at lines 15 to 22 on
22 page 2 comes from your read of the rule
23 and the TRO?
24 A Yes.
25 Q Can you please turn to page 4 of that same

Page 312

Page 314

1 definitions of line conditioning that
2 BellSouth is obligated to provide
3 TROs is more recent than the
4 earlier rules that are 51.319(a)(1)(iii),
5 and -- and it clearly is just -- when you
6 read it, it's intending to clarify the
7 earlier rules. And so my reading of those
8 clarifications are what I'm stating here.
9 Q Is it your position that Rule
10 51.319(a)(1)(iii) is an old rule?
11 A No, I -- it has been around longer than
12 the TRO, so it was written before the TRO.
13 Q Is it still valid?
14 A Yes.
15 Q Is it fair to say that the position you
16 take at lines 15 to 22 on page 2 stem from
17 your reading of the TRO and the rule?
18 MR CULPEPPER I'm going to
19 object again to this line of questioning.
20 Again, this is an area that has been
21 covered with Mr. Fogle in his previous
22 deposition. I'm referring specifically to
23 pages 84 and 85 where I think you are
24 asking him about his definition of line
25 conditioning as well as the FCC rule he

1 testimony, bottom of the page, lines 24 to
2 25.
3 A You said page 4?
4 Q Page 4.
5 A Okay.
6 Q And to paraphrase, it says the very fact
7 that the rule may not mention the phrase
8 routine network modifications does not
9 negate the FCC's express findings in the
10 TRO. Do you see that?
11 A Yes, I do.
12 Q What do you mean by that statement?
13 A That particular statement and the whole
14 point of this part of my rebuttal
15 testimony is attempting to show that you
16 have to take Rule 51.319(a)(1)(iii) and
17 the TRO together to determine what line
18 conditioning elements that BellSouth is
19 obligated to provide.
20 So, as a result, even though
21 routine network modification is not
22 mentioned in an earlier rule, it is
23 mentioned in the TRO as part of what the
24 FCC was attempting to use to clarify when
25 to apply obligations for line conditioning

5 (Pages 311 to 314)

Page 315

Page 317

1 to BellSouth and other ILECs
2 Q Why do you believe they have to be read
3 together?
4 A The only way you could not read them
5 together is if you just simply ignored
6 what was in the TRO. The TRO specifically
7 talks about how to see line conditioning,
8 how to treat line conditioning and
9 BellSouth's obligation for line
10 conditioning. So it's obviously a new set
11 of conditions or rules associated with
12 line conditioning.
13 Q Is your conclusion that they must be read
14 together based on legal research that
15 you've done?
16 A No. I'm just concluding that based on the
17 fact that when you have two or three sets
18 of rules that cross two or three sets of
19 orders or different sets of time that each
20 of them is cumulative or add to the
21 previous. That happens in regulatory
22 rules where you have rules that you have
23 to follow that come from a lot of
24 different places and a lot of different
25 times

Page 316

1 Q If I characterize your conclusion as a
2 common sense conclusion, would that be
3 fair?
4 A Yes.
5 Q Are you aware of whether the FCC has a
6 rule devoted to routine network
7 modifications?
8 A I'm not sure I'd characterize it as a
9 rule. I know they have some discussions
10 and definitions of what a routine network
11 modification is.
12 (DEPOSITION EXHIBIT NO. 23 WAS MARKED.)
13 Q Mr. Fogle, I'm handing you an excerpt of a
14 document. Do you know -- Do you
15 recognize this excerpt?
16 A I do not.
17 Q Would you accept that this is an excerpt
18 from the TRO?
19 A Subject to check, sure. I'll
20 Q And do you see on page 3 of what I just
21 handed you, there's a number eight about
22 halfway down the page?
23 A Yeah. It's page marked page 16, even
24 though it's the third page that you handed
25 me. Yes.

1 Q What are the underlined words that appear
2 next to the number eight?
3 A Routine network modifications.
4 Q Moving on to Issue 2-19, Mr. Fogle, this
5 one is about load coils. Has BellSouth's
6 position on Issue 2-19 changed from June
7 when you wrote your testimony to the North
8 Carolina Commission?
9 A No, it has not.
10 Q And thus, has your testimony changed?
11 A I don't believe that it has.
12 Q Can you please turn to page 5 of Exhibit
13 22, which is your November 19th testimony?
14 A Okay.
15 Q And look at the bottom of the page where
16 it starts on page 20 -- or line 24. You
17 state, the TRO clearly states that
18 BellSouth must perform the same line
19 conditioning activities -- turn the
20 page -- for CLECs as it does for its own
21 retail customers. Do you see that?
22 A Yes, I do.
23 Q On what do you base that statement?
24 A I believe I'm referring to a particular
25 paragraph. I'm thinking it's paragraph

Page 318

1 643 in the TRO. It talks about -- I
2 think there's a quote in there about how
3 line conditioning is best seen as a
4 routine network operation -- or something
5 along the lines -- I'm paraphrasing --
6 routine network activity or operation that
7 an ILEC does for its own customers.
8 Q Is there any other -- and I'm quite
9 impressed that you remember the number
10 but is there any other portion of the
11 order that you base this statement on?
12 A Not that I can recall right now. I must
13 say I'm guessing at the number. I believe
14 that's the right -- the correct number.
15 Q And you've also given testimony on Issue
16 2-22 with regard to bridged taps. Has
17 BellSouth's position changed on this issue
18 since June?
19 A No, it has not.
20 Q Has your testimony, therefore, changed at
21 all?
22 A I don't believe that it has.
23 MR. CULPEPPER: Issue 2-20?
24 MS. JOYCE: Uh-huh.
25 MR. CULPEPPER: Okay.

6 (Pages 315 to 318)

Page 319

Page 321

1 Q I direct your attention to Exhibit 22.
2 your November 19th testimony. at page 7
3 At lines 5 to 7 you state that the policy
4 of not removing bridged taps less than
5 2,500 feet. in quotes short bridged taps.
6 was established by both BellSouth and the
7 CLECs through the industry shared loop
8 collaborative. Do you see that?
9 A Yes I do
10 Q Is this the shared loop collaborative that
11 operates throughout the BellSouth region
12 as a cooperative effort between the CLECs
13 and BellSouth?
14 A Yes it is
15 Q Do you know as an absolute number how many
16 BellSouth loops in North Carolina have
17 less than 2,500 feet of bridged tap?
18 A I do not no
19 Q Do you know as a proportion of the total
20 BellSouth loops in North Carolina?
21 A I don't know
22 Q Do you know the answer to my questions for
23 any state in the BellSouth region?
24 A Not sitting here I don't
25 Q And directing your attention to page 6 of

1 possibly some of the testimony but -- I
2 don't recall whether it was the testimony
3 or not. But the issue statement -- at
4 least as I read it the issue statement I
5 was referring to in June versus the one we
6 did -- looked at in November were
7 different
8 Q Has your testimony on Issue 2-28 changed
9 from what it was in June?
10 A I believe I've added some additional
11 testimony
12 Q If you could, please, turn to page 14 of
13 your November 12th testimony, sir. And
14 let me ask you this. Are you aware of who
15 the petitioners are in this arbitration?
16 A The five CLECs, you're referring to? When
17 you say --
18 Q The petitioners, the Joint Petitioners in
19 this case. Do you know --
20 A Am I aware of who they are, like the names
21 of the companies?
22 Q Yes
23 A Yes I'm somewhat aware yes
24 Q So one is KMC?
25 A Uh-huh

Page 320

Page 322

1 your November 19th testimony. Lines 23 to
2 24 you state that such activity -- and
3 this regards removing bridged taps --
4 does not fall within the FCC's definition
5 of line conditioning in the TRO. Do you
6 see that?
7 A Yes I do
8 Q And what portion of the TRO are you
9 relying on to make that statement?
10 A I think I'm going back to the same
11 paragraph 6.3. Since BellSouth does not
12 routinely remove bridged taps for its own
13 self, therefore it's not part of the
14 FCC's definition of a line conditioning
15 that we're obligated to provide
16 Q And now, regarding Issue 2-28, if I may
17 direct your attention to Exhibit 21, your
18 November 12 testimony at page 2, lines 23
19 to 24. Do you see that?
20 A Yes
21 Q You state that Issue 2-28 or Item 46 has
22 been modified during the abatement by the
23 Joint Petitioners. What do you mean by
24 that statement?
25 A I believe it was the issue statement and

1 Q Another is Xspedius?
2 A Yeah, and NuVox. There are probably a
3 couple others, so -- if I remember
4 correctly, I think I mentioned them in the
5 front of my testimony
6 Q Of the companies that are the petitioners
7 in this case, do you know whether
8 BellSouth is providing DSL services over
9 UNEs leased to those companies right now?
10 A I don't know
11 Q Do you know whether anywhere in its region
12 BellSouth is providing DSL over UNEs
13 leased to a CLEC competitive local
14 exchange carrier?
15 A Yes
16 Q And in which states?
17 A I believe we're doing so in Georgia,
18 Louisiana and -- I believe those are the
19 only two states
20 Q Are you providing DSL over UNEs in Georgia
21 pursuant to an order of the Commission?
22 A Yes
23 Q And is the same true in Louisiana?
24 A Yes
25 Q Do you know how many CLECs are involved in

7 (Pages 319 to 322)

Page 323

1 situations where you're providing DSL over
2 leased UNEs?
3 A Looking -- In terms of the number of
4 count of CLECs?
5 Q Yes
6 A Around 20 in Georgia and 15 to 20 in
7 Louisiana
8 Q Do you know when BellSouth commenced
9 providing service in that way in Georgia?
10 A In Georgia I believe it was earlier this
11 year I don't know the exact date
12 Q And do you know when it commenced in
13 Louisiana?
14 A It would have been mid -- middle of last
15 year
16 Q Now, at the bottom of page 14 of your
17 November 12th testimony continued to the
18 next page, you state that a majority of
19 the CLPs have not requested, nor adopted
20 the necessary interconnection agreement
21 language. Do you see that?
22 A That is correct
23 Q When you use the term "CLPs," do you mean
24 competitive providers in the state of
25 North Carolina?

Page 324

1 A Yes. In North Carolina, they refer to
2 CLECs as CLPs or C-L-P-s
3 Q Is BellSouth providing DSL over UNEs in
4 North Carolina?
5 A No, we are not
6 Q Has it been ordered to do so?
7 A No
8 Q Do you believe BellSouth has an obligation
9 in North Carolina to provide DSL over
10 UNEs?
11 MR CULPEPPER Object to the form
12 of the question. Also, the line of
13 questioning about BellSouth's obligation
14 to provision DSL over UNEs is another area
15 that was covered at length in Mr. Fogle's
16 June deposition, so I -- this -- we're
17 plowing -- you know we are reploting
18 ground here
19 MS JOYCE Actually, what I'm
20 reading from is new in the November 12th
21 edition of the testimony
22 MR CULPEPPER The question --
23 The question as to whether -- The
24 question as I understood it, you were
25 asking about in North Carolina, my

Page 325

1 recollection is it's almost identical to Q
2 and A that we had in June
3 MS JOYCE Okay I can solve
4 this I can move on
5 Q On page 15 of the November 12th testimony,
6 Mr. Fogle --
7 A Yes
8 Q -- you refer to a lack of interest by a
9 majority of the CLPs. Why do you
10 characterize it as a lack of interest?
11 A In states like -- In Louisiana, in
12 Florida where we had to have orders to
13 provide DSL services to customers of
14 CLECs, only a handful of the CLECs have
15 adopted the language to do that. I
16 mentioned like 20 or so in Georgia. And
17 I'm not even sure if it's that high,
18 actually, but in Louisiana we have 15 or
19 20 CLECs. There's over a hundred
20 certificate of CLECs in the state, so it's
21 -- a very small percentage of the CLECs
22 are availing themselves of that particular
23 portion of the interconnection agreement
24 Q You said there are over a hundred CLECs in
25 which state?

Page 326

1 A I think in Louisiana
2 Q Do you know how many there are in Georgia?
3 A I believe also over a hundred
4 Q The 20 or so CLECs in Georgia that are
5 presently involved in a DSL over UNE
6 situation, do they have interconnection
7 agreement language --
8 A Yeah
9 Q -- on that issue?
10 A And, actually, as I continue to think
11 about each particular state where we do
12 DSL over UNE-P -- and I think the number
13 of CLECs involved in Georgia is actually
14 smaller. I believe it's only three or
15 four that are involved. Specifically
16 we've had two arbitrations where the
17 Georgia Commission has found that we have
18 to provide our DSL over UNE-P. And I
19 don't know -- I know both of them do --
20 I don't know if those interconnection
21 agreements have been adopted by others. I
22 know that has been the case in Louisiana,
23 and I know we have a handful in Kentucky
24 Q Do you know when the Georgia orders came
25 out that you discussed?

8 (Pages 323 to 326)

Page 327

Page 329

1 A I believe both of them were either late
2 last year or early this year. It's been
3 quite a few months.
4 Q So these three or four CLECs in Georgia
5 they have interconnection agreement
6 language entitling them to the situation?
7 A Yes.
8 Q Has any CLP or CLEC in another BellSouth
9 state requested similar language in their
10 interconnection agreement?
11 A I know a number of CLECs have adopted the
12 language in Louisiana and also in Florida
13 -- the language in Florida and some also
14 adopted in Kentucky.
15 Q Do you know how many in Florida?
16 A I believe it's, again, in -- it's in the
17 order of 15 to 20.
18 Q Do you know how many CLECs in Kentucky?
19 A I believe only five or six.
20 Q Do you know whether BellSouth would be
21 willing to entitle a CLEC in a state that
22 is not Florida or Kentucky to take the
23 Georgia interconnection language?
24 MR CULPEPPER: I object to the
25 form of the question.

1 interconnection agreements are state
2 specific, even if they're negotiated, or
3 they have a regional nature to them.
4 They're adopted and put in on a
5 state-by-state basis. Like I said, also
6 the rules -- the specific orders that we
7 have to provide our DSL services with
8 unbundled network elements or UNEs vary
9 from state to state. No two states are
10 the same. So the language that we have in
11 our interconnection agreements in those
12 states where we have been ordered matches
13 what we've been ordered to do. And so it
14 would be very difficult to move it to
15 another state to -- and still be in
16 compliance with what orders we would have
17 to comply with.
18 Q What if a CLEC in Georgia wanted to avail
19 itself of the language that the other
20 three or four CLECs have in Georgia, would
21 that be possible?
22 MR CULPEPPER: Object to the form
23 of the question.
24 A I mean, right now in Georgia, in
25 particular, we actually -- there's no

Page 328

Page 330

1 A The language we have in each state is
2 specific to the order that we have in each
3 state. So we have a specific order in
4 Florida, we have a specific order on
5 arbitrations in Georgia, the same in
6 Louisiana, and in Kentucky, so I don't
7 know that if we were to adopt language
8 from another state that it would actually
9 be in compliance with the order that we
10 have in the state you're trying to move it
11 to.
12 Q Would the Joint Petitioners be able to
13 adopt the Georgia interconnection
14 agreement language in Mississippi?
15 MR CULPEPPER: Object to the form
16 of the question. What particular language
17 are we talking about adopting?
18 MS JOYCE: The language in
19 Georgia that the three or four CLECs have
20 that enables the DSL over UNE situation.
21 MR CULPEPPER: And the question
22 was, could it be adopted in another
23 state?
24 MS JOYCE: Right.
25 A Not that I'm aware. As far as I know,

1 general order by the commission to provide
2 our DSL over UNE-P or with UNE-L or any
3 other type of UNE. We have the two
4 arbitrations, and I believe there are two
5 interconnection rules that we have.
6 There's the Interim Rules order, which I
7 think has -- freezes interconnection
8 agreements that have frozen elements in
9 them. And then there's also I think,
10 what they call the pick and choose rule
11 that says you can no longer pick and
12 choose individual terms and conditions out
13 of individual agreements. So you have to
14 adopt agreements in their entirety. You
15 know, neither one of those are unique to
16 this issue, so -- but this issue is
17 obviously bound by those two rules.
18 Q So those two rules, working in
19 conjunction, would that prevent a CLEC
20 today in Georgia from obtaining the
21 language in other Georgia agreements on
22 the issue of DSL over UNEs?
23 MR CULPEPPER: I object to the
24 form of the question.
25 A I guess I'm not sure what -- Maybe you

9 (Pages 327 to 330)

Page 331

Page 333

1 could rephrase your question for me to
2 help me understand exactly what you're
3 asking
4 Q Could a CLEC today get the -- in Georgia
5 get the interconnection agreement language
6 that other CLECs have in Georgia on this
7 issue?
8 A I don't believe they could no
9 Q Could other CLECs in Louisiana get the
10 interconnection agreement language
11 operating in Louisiana on this point?
12 A No If there was an interconnection
13 agreement that was available that had no
14 frozen elements in other words it was
15 adoptable and they were willing to adopt
16 it in its entirety in other words if they
17 were -- could find that agreement that
18 there was one they were allowed to adopt
19 based on the Interim Rules Order and they
20 were willing to take it in its entirety.
21 then I would guess they would be able to
22 get the DSL rules that are contained in
23 that interconnection agreement I don't
24 know all the different interconnection
25 agreements that are out there

Page 332

1 Q Has BellSouth incorporated DSL over UNE
2 language into its generic Louisiana
3 interconnection agreement?
4 A I don't know. to tell you the truth I
5 know we have language that we've
6 developed It may be in the generic or it
7 may only be language we offer when asked
8 Q What did you mean when you spoke of
9 agreements frozen by the Interim Rules
10 Order?
11 A It's my understanding that if there's an
12 interconnection agreement that has frozen
13 elements so -- then the agreement's I
14 guess frozen in time I guess it's kind
15 of like when the music stops when you're
16 playing musical chairs you know. so
17 Q Do you know what a frozen element is? Can
18 you tell me what --
19 A Only -- I'm speaking purely from
20 conjuncture I mean, a frozen element is
21 an element that's in dispute, in other
22 words my guess, UNE-P is probably a
23 frozen element I don't really know I'm
24 not as familiar with those parts of the
25 interconnection agreements or the disputes

1 that are going on there
2 Q Is there any agreement in Louisiana that's
3 not, as you say, frozen by an Interim
4 Rules Order?
5 MR CULPEPPER Object to the form
6 of the question And an additional
7 matter I'm not sure where this is
8 anything that's in his rebuttal testimony.
9 that is available interconnection
10 agreements
11 MS JOYCE Well, if you look at
12 page 14 to 15 regarding Issue 2-28 --
13 MR CULPEPPER Right
14 MS JOYCE -- beginning with the
15 words, even in those states where
16 BellSouth has been ordered, is new and
17 continues throughout that paragraph
18 That's all new
19 And Mr Fogle has opined that
20 there's a lack of interest by CLPs in
21 getting DSL service over UNEs, and so I'm
22 just trying to establish whether they
23 could And this is new testimony, so
24 MR CULPEPPER Agree, this is new
25 testimony and I believe you've already

Page 334

1 asked him his opinion and his basis for
2 why there's a lack of interest in DSL over
3 UNE-P That's been asked and answered
4 So the question about what is adoptable or
5 not adoptable is not here and is, thus,
6 not in his testimony and, thus, is beyond
7 the scope of why we're here today
8 MS JOYCE Counsel I really
9 don't think that your characterization of
10 the agreement or my line of questioning is
11 fair I'm asking him about the foundation
12 on which he came to the conclusion that
13 there's a lack of interest This is a new
14 statement that's appearing here in this
15 testimony that wasn't in June and I'm
16 trying to establish why he thinks there's
17 a lack of interest given the legal
18 environment in which we're operating and
19 on which Mr Fogle is testifying And so
20 I have no intention of rehashing old
21 issues, but I do think I am entitled to an
22 answer about why Mr Fogle believes
23 there's a lack of interest I think
24 that's entirely fair
25 MR CULPEPPER He answered that

10 (Pages 331 to 334)

Page 335

Page 337

1 question though
2 MS JOYCE I don't think he did
3 answer the question I out -- You know I
4 was very careful I can't show you, but
5 this is new and I've been assured that
6 it's new It did not appear earlier, and
7 he's chosen because, as he testified 20
8 minutes ago BellSouth's position has
9 changed somewhat on this issue perhaps in
10 response to a Joint Petitioner changing
11 their position. I don't know but this is
12 something new and to use the vernacular
13 it's fair game He has stated there's a
14 lack of interest which clearly supports
15 BellSouth's position that not providing
16 its DSL service over the CLPs' UNE
17 facilities is not anticompetitive He has
18 raised this issue, and I'm entitled to ask
19 him about this statement I'm not trying
20 to rehash some other
21 MR CULPEPPER Okay Well,
22 let's -- let's -- I think he's been
23 asked a question, but since it's right
24 here on this page 15 ask him again about
25 the basis -- well, just ask him the

1 that
2 Were you involved in the
3 negotiations in Georgia by which these
4 three to four CLECs obtained
5 interconnection language that permitted
6 the DSL over UNE scenario?
7 A I wasn't involved in the negotiations
8 directly, although I was involved in the
9 development of the language and the
10 position and also the operational and the
11 technical procedures that we had to put in
12 place to be able to offer the DSL service
13 over UNE-P
14 Q Do you know how long those negotiations
15 took?
16 A I believe, for reasons other than just
17 this one that overall negotiations with
18 MCI took several months
19 Q Did you participate in the negotiations in
20 Louisiana on the same point?
21 A Again, helped develop the language I
22 don't -- I don't recall whether I was
23 actually on the phone with the other CLECs
24 or not during the negotiations, but helped
25 the language and the process with which we

Page 336

Page 338

1 question again
2 Q Where to begin Let me ask you this The
3 sentence that begins, this lack of
4 interest by a majority of the CLPs --
5 A Okay What page is that on, again?
6 Q We're on 15, line 3
7 A Okay Yes
8 Q That sentence does that apply to North
9 Carolina only?
10 A No It applies to multiple states
11 Q In how many states are CLPs able to engage
12 in the DSL over UNE scenario?
13 A It varies by state Obviously DSL over
14 UNE-P is available in various forms in
15 Kentucky and in Georgia and in Louisiana
16 And DSL to end-user customers, whether
17 they have UNE-P or UNE-L, is available in
18 Florida, but we don't actually provision
19 it on top on the UNE-P as you phrased
20 it It's a separate facility
21 Q So that's four states?
22 A Four states, that is correct
23 Q And the BellSouth region has nine states?
24 A That is correct
25 Q Does any CLP in North Carolina -- strike

1 would comply with the order and make DSL
2 over UNE-P available
3 Q Do you know how long those negotiations
4 took?
5 A I don't know Like I said, there's been a
6 number of different CLECs and so a lot of
7 times they're negotiating multiple issues,
8 not just the one in particular So some
9 may have been only a few weeks, some may
10 have been a few months In some, it just
11 may have been just a matter of just
12 adopting the existing language as it was
13 available So I don't -- I'm not
14 involved directly in the day-to-day
15 negotiations with the CLECs
16 Q Do you know when the Interim Rules Order
17 came out?
18 A I believe only a few months ago
19 Q And do you know when the new pick and
20 choose rule came out?
21 A Sometime over the summer I guess
22 Q Do you know whether any CLEC in Florida
23 has requested DSL over UNE-P language
24 since those orders came out?
25 A I don't know if that's the case

11 (Pages 335 to 338)

Page 339

Page 341

1 Q Do you know how many CLECs in Florida had
2 requested that language before those
3 orders came out?
4 A All of the ones who requested it were able
5 to adopt the language before the order
6 came out. Like I said, it's a matter of
7 15 to 20.
8 Q And in Kentucky you said there are five
9 or six CLECs right now that are doing DSL
10 over UNE-P. When had those requests been
11 made for those CLECs to get that
12 language?
13 A I believe it was prior -- that it was --
14 would have been either late last year or
15 part of this year.
16 Q Do you think a CLEC in Florida could
17 today -- today -- December 7th, get DSL over
18 UNE language in their agreement?
19 A Well, the agreement language in Florida is
20 a little different. The original
21 arbitration order we had was with FDN, and
22 then there was an additional, I guess
23 hearing that was brought by FCCA, but the
24 language specifically requires us to offer
25 our DSL services to end users who have

1 Interim Rules Order or the pick and choose
2 rule, there has been a law passed by the
3 Kentucky legislature that has told the
4 state PSE they don't have jurisdiction
5 over DSL. And so the result -- we're not --
6 in compliance with that law -- we're not
7 offering any new DSL over UNE-P
8 agreements, but there are some existing
9 agreements that were grandfathered.
10 Q Has the Kentucky PSC rescinded, taken
11 back, its DSL over UNE order?
12 A I don't believe that they have, but I do
13 believe that the law nullified it.
14 Q And you're basing this on your own
15 understanding of --
16 A My understanding, yes.
17 Q On page 16 of your November 12th
18 testimony -- again, this is new -- a new
19 bit of testimony -- you state at lines 13
20 to 15 that this Commission requested that
21 the issue be addressed and decided by the
22 entire Commission in a generic
23 proceeding. Do you see that?
24 A Yes, I do.
25 Q And by "this Commission," are you

Page 340

Page 342

1 either UNE-P or UNE-L. And the reason
2 behind that is because FDN was a UNE-L
3 provider, didn't use UNE-P.
4 And so what BellSouth does is
5 provisions DSL over a separate facility or
6 separate line. There's actually two lines
7 going into the home. That's how we handle
8 the order in Florida, because we have to
9 support UNE-P and UNE-L. It's complex.
10 And so that language, again, the
11 same as I talked about for Louisiana -- if
12 there's an interconnection agreement that
13 is not frozen by the IRO or if a CLEC
14 wanted to, you know, adopt it in its
15 entirety, then -- keeping with the pick
16 and choose rule, then it's available. But
17 I don't know -- like I said, I don't know
18 without looking at the interconnection
19 agreements to know if there's one that
20 exists like that.
21 Q And the same question as to Kentucky, do
22 you know whether a CLEC today -- December
23 7th, in Kentucky could get that
24 interconnection language?
25 A In Kentucky, even independent of the

1 referring to the North Carolina Utilities
2 Commission?
3 A Yes.
4 Q Do you know the procedural status of that
5 case?
6 A I don't believe any procedures have been
7 set up. I don't know if it's been -- the
8 docket has been established or any dates
9 have been set for that.
10 Q And what does the term "generic" mean to
11 you in this sense?
12 A A generic proceeding is a proceeding that
13 goes in front of the Commission that would
14 apply to all CLECs universally.
15 Q Would the decision apply to the
16 petitioners in this arbitration?
17 A Yes, it would.
18 Q On page 18 of this same testimony at lines
19 11 to 13, you state that BellSouth is not
20 obligated to provide DSL service over UNE
21 facilities in several states, including
22 North Carolina. Do you see that?
23 A Yes.
24 Q Would it be fair to say that you mean in
25 this statement it is not currently

12 (Pages 339 to 342)

Page 343

Page 345

1 obligated to provide its DSL service in
2 North Carolina?
3 MR CULPEPPER Object to the form
4 of the question
5 Q To be more clear let me reread the
6 sentence You say that BellSouth is not
7 obligated to provide its DSL service over
8 the UNE facilities in North Carolina
9 Is your position that -- or may I
10 characterize that as not currently
11 obligated to do so?
12 MR CULPEPPER The same
13 objection
14 A We don't have an order in North Carolina
15 requiring us to provide our DSL service
16 over UNE-P or UNE-L or any other UNE
17 facilities. so that's what I mean by we're
18 not obligated There's no order in North
19 Carolina that requires us to do so
20 Q At page 19 of this testimony at lines 9 to
21 12, essentially, you state that in a
22 deregulated -- do you have that?
23 A Yes I do
24 Q In a deregulated, competitive environment,
25 BellSouth, as well as any competitor, does

1 tariffed at the FCC obviously you're
2 subject to the jurisdiction of the FCC and
3 the tariffs that you write there so to
4 my mind that's regulated
5 There are other services and data
6 services that we have both tariffed as
7 interstate access services or intrastate
8 access services that we tariff at the
9 state commissions or at the FCC Those
10 are obviously regulated by those bodies
11 When BellSouth wanted to offer
12 FastAccess service it didn't have to file
13 a tariff It didn't have to file any type
14 of a -- I guess seeking permission or
15 terms of conditions with the state
16 commission as to how it was going to offer
17 that particular service because it was
18 available in a competitive marketplace I
19 guess it would be the same if BellSouth
20 wanted to offer lemonade or some other
21 type of service that was available
22 competitively. BellSouth could choose to
23 do so without having to go to a commission
24 to request to do so
25 Q Is this understanding based on your own

Page 344

Page 346

1 not seek, nor is it required to have
2 express permission from any regulatory
3 body for the terms and conditions with
4 which it chooses to offer its services
5 What do you mean by "deregulated"
6 in this sentence?
7 A BellSouth offers DSL services, a number of
8 different DSL services There's an
9 internet service called FastAccess, which
10 is an enhanced service offering It's an
11 IP-based enhanced service offering It's
12 completely unregulated And so my use of
13 the word deregulated was simply referring
14 to flavors of BellSouth DSL products that
15 operate in a completely unregulated
16 environment
17 Q On what do you base your understanding
18 about the degree to which BellSouth is
19 deregulated?
20 A I base that based on the number of rules
21 that we have to follow, depending on which
22 products and services that we're dealing
23 with
24 In my experience in working with
25 the wholesale DSL services that are

1 read of various rules in this industry?
2 A Just various rules and -- as well as
3 experience in that I've seen large
4 regulatory hurdles with some products
5 where you have a tremendous amount of work
6 that you have to do with the regulatory
7 bodies to roll out new products and
8 services and the actual tariffing is a
9 key part -- part of the service
10 development, product development whereas
11 in a nonregulated or competitive
12 offerings it's much more driven by what
13 the customer interest is, technical
14 capability determining the price Other
15 types of things become much more primary
16 in the development of the service
17 Q In the same sentence that I just read,
18 what do you mean by the term "competitive
19 environment"?
20 A The broadband services environment that
21 BellSouth competes in is a highly
22 competitive environment There's a
23 tremendous number of intermodal
24 competitors for broadband
25 Q What is an "intermodal competitor"?

13 (Pages 343 to 346)

Page 347

Page 349

1 A An intermodal competitor as it's termed
2 in broad -- is used in broadband is a
3 competitor that uses a different
4 technology to offer a similar service to
5 compete

6 The classic example is cable modem
7 service. It uses an underlying technology
8 different than DSL, but the end users'
9 service, their broadband service or cable
10 modem or DSL, is very very similar and
11 they choose them as substitute products
12 for each other

13 Q Are there any other kinds of intermodal
14 service?

15 A Intermodal broadband services?

16 Q Yes

17 A Yes. There's satellite broadband
18 service. There are fixed wireless
19 broadband services. There are mobile
20 wireless broadband services as well as ATM
21 frame relay, ISDM, metro ethernet, giga
22 bit ethernet, any type enter into a
23 broadband space

24 Q How many entities other than BellSouth
25 provide broadband services over the

1 A I don't. I know that there's some FCC
2 reports that talk about broadband
3 competition that go into some detail in
4 terms of numbers of competitors in each
5 state. I just can't come up with the
6 figures right here

7 Q Do you know what BellSouth's current
8 market share is of the broadband market?

9 MR CULPEPPER. Object to the
10 question. This wasn't -- I mean where
11 is this coming from in his testimony?

12 MS JOYCE. He stated that there
13 is a deregulated, competitive
14 environment. I'm allowed to understand
15 what his understanding is of the word
16 competitive environment because it has
17 several meanings

18 MR CULPEPPER. Back on page 19?

19 MS JOYCE. 19, lines 9 to 10

20 A In the broadband market space, BellSouth
21 has less than 50-percent market share of
22 broadband services

23 Q Do you know what BellSouth's market share
24 is of DSL services?

25 A Within the DSL technology segment of the

Page 348

Page 350

1 telephone network in North Carolina?

2 A I'm going to have to ask some clarifying
3 questions

4 Q Not resellers

5 A You say entities offering broadband over
6 the phone network that's not BellSouth.
7 Are you referring to facility-based
8 competitors? Are you --

9 Q We can start there. Tell me what your
10 understanding of a facility-based
11 competitor is

12 A A facility-based competitor is a CLEC or
13 in North Carolina it's a CLP that has
14 constructed their own facilities and
15 provides their services over their own
16 network facilities. They've either
17 constructed their own fiber, their own
18 copper, or hybrid fiber coax facilities
19 and compete using their own

20 Q How many facilities-based entities other
21 than BellSouth provide broadband in North
22 Carolina?

23 A I don't know the answer to the number in
24 North Carolina

25 Q Do you know the number in any other state?

1 broadband marketplace, it varies anywhere
2 from 70 to 90 percent where BellSouth has
3 that type of penetration or, I guess you
4 could say, technology share

5 Q Is that region wide?

6 A It varies from state to state depending on
7 the level of competition that we have.
8 Some competitors choose not to be in rural
9 areas, so our market share might be
10 higher. Some competitors are more focused
11 on urban areas, so our market share would
12 be lower

13 Q On a region-wide basis, could you provide
14 me a range of what DSL's market share is
15 in the DSL market?

16 A In the DSL technology, not -- DSL itself
17 is not a market. It is in the range of 80
18 to 85 percent

19 Q Do you know what the standard is to assess
20 market power in an antitrust sense?

21 MR CULPEPPER. Object to the form
22 of the question

23 A I have some familiarity with it, but I
24 wouldn't necessarily say I could quote the
25 standard

14 (Pages 347 to 350)

Page 351

Page 353

1 Q So is it fair to characterize your
2 testimony at lines 9 through 10 that
3 you're referring to the broadband market
4 as a whole with all of the various
5 technologies used to provide broadband?
6 A Yes
7 Q Also on page 19 lines 23 to 24, you state
8 that the Commission -- rather this
9 Commission has never and could not be
10 expected to require BellSouth to provide
11 its DSL services at no charge to end-user
12 customers. Do you see that?
13 A Yes
14 Q What do you mean by could not be expected
15 to?
16 A In this particular case I believe what
17 the petitioners are asking for is some
18 form of punishment that BellSouth offer a
19 service free of charge, in other words not
20 collect revenues for the services, until
21 this issue is resolved to the satisfaction
22 of the Joint Petitioners
23 And my statement and my testimony
24 is that we're in full compliance with the
25 existing orders, both at the federal and

1 FastAccess, then the end user of
2 FastAccess service is the customer of
3 record for FastAccess
4 Q By "end user", do you mean a natural
5 person?
6 A Yes or a natural business I guess
7 Q Can BellSouth charge an end user for
8 services that it provides to them?
9 MR CULPEPPER Object to the form
10 of the question
11 A I think BellSouth offers its services with
12 terms and conditions. And one of those
13 terms and conditions is typically how much
14 we're going to charge for that
15 Q If BellSouth in this -- I'm going to give
16 you a scenario BellSouth is presently
17 providing DSL services to Ms. Smith at her
18 home over UNE facilities
19 A You're referring to FastAccess service?
20 Q BellSouth's DSL retail finished product
21 A Okay
22 Q Ms. Smith is not an ISP
23 A Got you. There may be a Ms. Smith's ISP.
24 so I just wanted to make sure. Okay. Go
25 ahead

Page 352

Page 354

1 the state level. And since there's no
2 punishment that is justified in this
3 situation, and that's -- so this
4 Commission should not be -- could not be
5 expected to basically levy a punishment
6 against BellSouth in the situation since
7 we've done nothing wrong
8 Q When BellSouth provides DSL services over
9 UNEs, who is its customer?
10 A For which service?
11 Q The DSL service
12 A We have two flavors of DSL service that we
13 sell. We have a wholesale DSL service
14 that is sold to an ISP. And then the ISPs
15 sell their services to end-user
16 customers. Our wholesale DSL service is
17 not typically sold to end-user customers.
18 So if you're referring to BellSouth's
19 tariffed DSL service, if it's available
20 over a UNE-P, then the customer would be
21 the internet service provider who's
22 purchased that service, which could be
23 Earthlink. It could also be BellSouth's
24 own internet service operation, which we
25 call FastAccess. If you're referring to

1 Q Are there states in which -- strike
2 that
3 If Ms. Smith is receiving DSL over
4 UNEs, then you understand that she must be
5 getting service from -- a non-DSL service
6 from a CLP or a CLEC, isn't that right?
7 A Yes
8 Q Could BellSouth be charging Ms. Smith
9 directly for the DSL service that she
10 receives?
11 A Yes
12 Q Would these be retail market-based rates?
13 A It would depend on the terms and
14 conditions of the service. It varies
15 somewhat by state to state
16 Q In that scenario, can you think of a
17 reason why the CLP that serves or the CLEC
18 that serves Ms. Smith should be charged
19 anything by BellSouth with regard to the
20 DSL service?
21 MR CULPEPPER Object to the form
22 of the question
23 A I guess I'm not sure about your question.
24 Could you rephrase it for me in terms
25 of -- You lost me with terms of who's

Page 355

Page 357

1 collecting money from who
2 Q All right In my scenario --
3 A Yes
4 Q -- BellSouth is providing DSL over UNEs to
5 Ms Smith
6 A Okay
7 Q And we've established BellSouth is
8 charging Ms Smith money for that DSL
9 service
10 A That we have a separate agreement with
11 Ms Smith for her DSL service that's
12 completely independent other than the fact
13 it's over the UNE So we have a contract
14 with her for what she's paying us?
15 Q Yes
16 A Okay
17 Q And because UNEs are involved then
18 clearly there's a CLEC that is also
19 serving Ms Smith
20 A Uh-huh
21 Q Leasing these UNEs from BellSouth
22 A Yes
23 Q And that's the typical arrangement, that
24 the CLEC leases these UNEs from
25 BellSouth

1 service over the CLEC's UNE
2 Q Does BellSouth provide DSL over UNEs in
3 any state absent a state commission order?
4 A No
5 Q Can you explain why the CLEC would be a
6 cost causer when the DSL over a UNE
7 situation is implemented?
8 A From a cost causer perspective BellSouth
9 didn't introduce this language didn't ask
10 for this requirement so the CLECs are
11 wanting BellSouth to continue to offer
12 their DSL service And CLECs are
13 benefiting from those rules and those
14 orders and it's BellSouth that's having
15 to incur all the costs
16 Q In the Ms Smith scenario --
17 A Uh-huh
18 Q -- who would have ordered the DSL service
19 from BellSouth?
20 A Ms Smith
21 Q Can you think of any other industry in
22 which a regulated entity would impose the
23 costs of legal compliance on a third party
24 who is not their direct customer?
25 MR CULPEPPER Object to the form

Page 356

Page 358

1 Can you think of a reason that the
2 CLEC would need to pay BellSouth any money
3 with respect to the DSL service that
4 BellSouth is providing to Ms Smith?
5 A I know that in situations where we've had
6 to do DSL over UNE-P or DSL with UNEs in
7 Florida or in Louisiana or Georgia we've
8 expended a considerable amount of money to
9 comply with those orders in both manual
10 reworking, facility -- in records
11 keeping and a number of things So
12 BellSouth has essentially had to incur
13 considerable costs to do -- to offer --
14 to continue to offer their service in
15 compliance with these orders
16 The reason for that is because the
17 CLECs are the ones who want us to provide
18 service they're not wanting to provide
19 themselves So it's possible that a
20 commission or somebody could construe that
21 since the cost causer is the CLEC who has
22 brought this into an arbitration,
23 BellSouth was not willing to incur these
24 costs, that the CLEC should bear the costs
25 associated with providing BellSouth DSL

1 of the question
2 A I'm not even sure what that means, let
3 alone be able to come up with an example
4 Q Well, I think we've established that
5 BellSouth has been ordered in several --
6 four states to do DSL over UNEs by a state
7 commission And in the scenario that I
8 presented to you Ms Smith would have
9 been the instigator of the order for the
10 DSL services Ms Smith is paying for
11 those services
12 A That's correct
13 Q You've also opined on the fact that a CLEC
14 in that instance was a cost causer because
15 BellSouth expended resources to comply
16 with a commission order
17 A Yes
18 Q I'm just wondering if there's any other
19 industry in which a third party must
20 reimburse a regulated entity for the tasks
21 it performs in complying with legal
22 orders?
23 MR CULPEPPER Same objection
24 A I don't know
25 MS JOYCE Mr Fogle, thank you

16 (Pages 355 to 358)

Page 359

Page 361

1 I am finished with my direct examination

2 Mr Culpepper do you have

3 anything?

4 CROSS-EXAMINATION

5 BY MR CULPEPPER

6 Q Mr Fogle you were asked some questions

7 about -- I think you were asked one time

8 what is a frozen element?

9 A Yes

10 Q And are you here to testify as to what is

11 a frozen element?

12 A No, I'm not

13 MR CULPEPPER No further

14 questions

15 MS JOYCE Mr Fogle, you'll be

16 receiving a copy of this transcript And

17 you will have the right within 30 calendar

18 days of receiving it to read it and make

19 any typographical changes and also to sign

20 it Do you understand that?

21 THE WITNESS Yes

22 MS JOYCE And that if you fail

23 to sign it within 30 days the transcript

24 is nonetheless deemed an official

25 transcript Do you understand that?

1 ERRATA SHEET

2

3 Case name In the Matter of

4

5 Joint Petition NewSouth

6 Communications for

7 Arbitration with BellSouth

8

9 Deponent Eric Fogle

10

11 Date

12

13 PAGE LINE READS SHOULD READ

14 / / /

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

Page 360

Page 362

1 THE WITNESS Yes I do

2 MS JOYCE Thank you for coming

3 here today I hope you have a safe travel

4 home

5 THE WITNESS Thank you

6 MS JOYCE Off the record

7 (THE DEPOSITION CONCLUDED AT 1 30 P M)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 SIGNATURE

2 I Eric Fogle do hereby state under oath

3 that I have read the above and foregoing

4 deposition in its entirety and that the

5 same is a full, true and correct

6 transcript of my testimony

7 Signature is subject to corrections on

8 attached errata sheet if any

9

10 Eric Fogle

11 State of

12

13 County of

14

15 Sworn to and subscribed before me this

16 day of 20

17

18 Notary Public

19

20 My commission expires

21

22

23

24

25

Page 363

CERTIFICATE

State of North Carolina
County of Hamett

I Nicole Ball Fleming, a notary public in
and for the State of North Carolina do
hereby certify that there came before me
on the 7th day of December, 2004, the
person hereinbefore named, who was by me
duly sworn to testify to the truth and
nothing but the truth of his knowledge
concerning the matters in controversy in
this cause, that the witness was thereupon
examined under oath, the examination
reduced to typewriting by myself, and the
deposition is a true and accurate
transcription of the testimony given by
the witness.

I further certify that I am not counsel
for, nor in the employment of any of the
parties to this action, that I am not
related by blood or marriage to any of the
parties, nor am I interested, either
directly or indirectly, in the results of
this action.

In witness whereof, I have hereto set my
hand and affixed my official notarial
seal, this the 21st day of December,
2004.

Nicole Ball Fleming
Notary Public
My commission expires 1/30/05